



# THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

- This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
- A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
- This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
- The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
- When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

**The Canadian Senate:**

**A chamber of sober second thought or an upper house shaped by partisan politics during the first sixty years of Confederation?**

Joseph Waitschat

Master of Philosophy  
The University of Edinburgh  
2011

### **Signed Declaration**

In accordance with Section 2.5 of the University of Edinburgh's Postgraduate Assessment Regulations for Research Degrees, I, Joseph Waitschat declare (a) that this thesis has been composed by myself, the candidate, and (b) that the work is the candidate's own, and (c) that the work has not been submitted for any other degree or professional qualification.

---

**Joseph Waitschat**

**Date**

## **Abstract**

The Canadian Senate is often the target of criticism and there have been countless calls to reform Canada's upper chamber since its creation in 1867. While much has been written about the Senate's lacklustre performance in the modern period, there remains limited discussion on the operation of the Senate during its early years. Addressing this lacuna is important, in order to consider whether the Senate ever performed as those who designed the institution had intended.

This thesis analyzes the original intentions for the Canadian Senate, developed by the Fathers of Confederation and specified in the *British North America Act* (1867), showing how the architects of the Senate regarded it as a chamber for sober second thought. The thesis then considers the extent to which senators followed the founders' intentions when legislating over three government bills that were blocked in the Senate during the first sixty years of its existence. Drawing on *Hansard*, newspaper articles and archival documents, the thesis examines the operation of the Senate with regard to debating and then blocking the Esquimalt and Nanaimo Railway Bill (1875), the Naval Aid Bill (1912) and the Old Age Pension Bill (1926). These blocked bills provide a representative sample of the diverse bills considered by the Senate in its first sixty years. When considered together they also encompass the different federal political party contexts which occurred in the Canadian Parliament within the first sixty years of Confederation.

The thesis demonstrates that although the senators provided a well informed, critical second thought when debating these bills, the issue of partisan block voting that had concerned the Fathers of Confederation and remains a significant aspect of contemporary debates about Senate reform, affected the independence of the Senate and the legislative outcomes in each case.

The thesis suggests that although the Senate can provide a sober second thought on legislation, the ideal Senate, as envisaged by its creators, is always likely to be affected by the dynamics of partisan politics. Those involved in the creation of second chambers, or proposing Senate reform in the contemporary period, may benefit from the broader historical perspective that this thesis provides. In making a broader contribution to debates about the design of second chambers, this thesis highlights how the objectives of those involved in the initial design of second chambers may not be easily achieved in practice, even after scrupulous deliberations prior to a second chamber's establishment.

## **Table of Contents**

Signed Declaration	ii
Abstract	iii
Table of Contents	iv
List of Tables, Maps, and Diagrams	v
Chapter One: Introduction	1
Chapter Two: The Intentions of the Fathers of Confederation	25
Chapter Three: The Esquimalt and Nanaimo Railway Bill	52
Chapter Four: The Naval Aid Bill	80
Chapter Five: The Old Age Pension Bill	114
Chapter Six: Conclusion	138
Appendix A: Significant dates regarding the Esquimalt and Nanaimo Railway Bill	157
Appendix B: Significant dates regarding the Naval Aid Bill	158
Appendix C: Significant dates regarding the Old Age Pension Bill	159
Appendix D: Excerpts of the 72 Quebec Resolutions	160
Appendix E: Excerpts of the <i>British North America Act, 1867</i>	161
Bibliography	166

## **List of Tables**

Table 1.1: Current Allocation of Canadian Senate Seats.	9
---	---

## **List of Maps**

Map 3.1: Location of British Columbia within Canada in 1871.	54
Map 3.2: Location of Esquimalt and Nanaimo on Vancouver Island.	58

## **List of Diagrams**

Diagram 3.1 – Political Party Allocation in the Senate in 1875	63
Diagram 3.2 – The Senate vote regarding the Esquimalt and Nanaimo Railway Bill	68
Diagram 4.1 – Political Party Allocation in the Senate in 1913	95
Diagram 4.2 – The Senate vote regarding the Naval Aid Bill	105
Diagram 5.1 – Political Party Allocation in the Senate in 1926	125
Diagram 5.2 – The Senate vote regarding the Old Age Pension Bill	132

## **Chapter One: Introduction**

## **Introduction**

There is an ever growing reform movement in Canada. It is not new, for it can be traced back over one hundred years, it is almost as old as Canada itself. Certain years it is dormant, but other years it is high on the agenda. There have been countless attempts for reform, numerous reform models proposed, lessons learnt and after years of failure there might be some success on the horizon in reforming one of Canada's most historic political institutions. The institution in reference is the Senate of Canada.

The Canadian Parliament consists of the House of Commons, the Senate and the Sovereign. The House of Commons is the lower chamber and its members are popularly elected while the Senate is the upper chamber which has one hundred and five senators who are appointed by the governor general of Canada on the advice of the prime minister. All proposed legislation must be passed by both chambers before it receives Royal Assent and becomes law. The Canadian upper chamber has undergone little reform since Canada's creation in 1867, as the last substantial reform on the Senate was in 1965 when the retirement age changed from a life appointment to mandatory retirement at the age of seventy-five.

There is the potential for some success in Senate reform with the current Canadian Government under Prime Minister Stephen Harper. As the Prime Minister has majority support in both chambers of Parliament, there is the probability of reform legislation passing through the Canadian Parliament with little resistance. However, if the best predictor of the future is that of the past, Prime Minister Harper has a very steep hill to climb because Senate reform is incredibly difficult to achieve in Canada as the provinces undoubtedly will get involved. Calls for change and reform are not new, and in the twenty-first century Canadians are uneasy about non-elected parliamentarians acting against the elected and accountable members of parliament.

## **The Background and Context of the Canadian Senate**

Ever since the Senate was created in 1867 it has been subjected to numerous reform proposals. In the most recent Canadian Speech from the Throne delivered in Parliament on 3 June 2011, Governor General David Johnston said, "Reform of the



Senate remains a priority for our Government. Our Government will reintroduce legislation to limit term lengths and to encourage provinces and territories to hold elections for Senate nominees.”<sup>1</sup> The debate is alive and well in the contemporary period as it has been throughout most of Canadian history. However there are many questions that develop within the larger debate surrounding Senate reform. With the constant barrage of criticism forwarded at the Canadian Senate concerning its function and performance, which resulted in the subsequent calls for reform, an interesting and important question developed. Throughout the history of the Canadian Senate, did it ever function and perform as it was intended by its creators? If it did function and perform as it was intended, what changed from then to now, or if it did not, why not? Was there ever a period when the Senate performed as it was intended during its history?

There were many time periods on which an in-depth analysis could be performed, but this thesis focuses on the Senate immediately following the act of Confederation. An examination of the Senate in the early years after Confederation is interesting because one could look at Confederation as an event on reform in that a new Senate was created. It is relevant in the modern period today because people want to create a new reformed Senate and along with that comes their intentions and expectations. Back in Canadian history during the Confederation Conferences, the Fathers of Confederation discussed and created the new Canadian Senate and they had certain intentions for it on how it would function. By examining how closely the intentions and expectations of the Fathers of Confederation were for their new Senate can be relevant in the modern discussion because what one wants and creates, may or may not be what one forms and actually develops into. This thesis surrounds and appreciates the wider discussion on Canadian Senate reform, but focuses on the Senate’s early years immediately after Confederation in 1867.

The Fathers of Confederation had a vision for the Senate, and they tried to realize it through subsequent sections of the *British North America Act* (1867). The Canadian Senate along with the House of Commons make up the two chambers of Parliament, with the Sovereign comprises the Parliament of Canada. The Parliament of Canada was established on 1 July 1867 with the enactment of the *British North*

---

<sup>1</sup> Canada. Speech from the Throne. *Here for all Canadians: Stability, Prosperity, Security*. (Ottawa, 3 June 2011), 15.

*America Act.* Although the House of Commons and the Senate were created to complement each other, disagreements between the two chambers were inevitable, and the Senate occasionally blocks important government legislation passed by the House of Commons. The primary function of the Senate is to legislate. An examination of how the Senate legislated over a number of bills, particularly those that were blocked by the Senate will allow the development of a conclusion whether or not the Senate performed to the intentions of the Fathers of Confederation. The senators' justification into its blockages provided a valuable insight into the Senate's functioning and whether they adhered to the intentions set out for it.

### **The Core Questions and Objective of the Thesis**

This thesis evaluates and explores the legislative actions that the Canadian Senate took during the first sixty years of Confederation. The objective of this thesis includes the analysis of three important government bills that the Senate blocked, which were the Esquimalt and Nanaimo Railway Bill (1875), the Naval Aid Bill (1912), and the Old Age Pension Bill (1926), to understand if the Senate adhered to the intentions of the Fathers of Confederation. Did the Senate perform as it was intended after a period of reform following Confederation in 1867? Did the Senate follow the original intentions that the Fathers of Confederation had for the upper chamber when it exercised its legislative power? Did the Senate provide a well informed, critical sober second thought when debating and then blocking these three important provincial, national and internationally focused government bills? If the Senate did not, what were the prevailing problems surrounding the chamber which prevented it from so doing? Finally some conclusions are produced about the Senate's blockages in its early years within the larger context on reforming the Canadian Senate, and there are some cautionary remarks that can be applied and paralleled to the contemporary period of Canadian Senate reform.

### **The Existing Scholarship**

In reviewing the literature on the Canadian Senate, I found the public debate on the Senate focused on the present not the past as there was little discussion surrounding the performance of the Senate during the first sixty years of the Senate's

history with the exception of the sporadic book or newspaper article. On the other hand, in the last forty years there has been an explosion in literature regarding criticism towards the Senate and calls for reform.

### The Primary Role of Upper Chambers

The Canadian Senate is a rather particular institution and has generated much criticism. The Canadian Senate "...has been ridiculed, vilified, abused and criticized to such an extent that it probably today has one of the worst images of any public body in Canada."<sup>2</sup> Scholars, journalists, politicians and everyday individuals all have something to say about Canada's upper chamber. Before the criticisms of the Senate are discussed, it is important to appreciate a greater understanding of upper chambers.

The primary role of upper chambers is to enact and review proposed legislation that has been introduced in that parliament or national assembly. If ideal lower legislative chambers existed in the world, there would not necessarily be a need for upper chambers of review. However there is no ideal lower chamber that works perfectly and whenever a second body looks afresh at proposed legislation, it is as F.A. Kunz argued, "...extremely useful, if not quite necessary."<sup>3</sup> I would agree with Kunz that it is extremely useful but I would not agree that it is completely necessary in every case. As an example each Canadian province has a unicameral legislature which legislates effectively. However, I would agree with Kunz in that it is quite necessary for a second chamber in Canada at the national level. Having a second chamber is beneficial beyond revision and improvements to legislation because the upper chamber might uncover difficulties not noticed by the lower chamber, which make it clear that a second opinion should be sought and valued.<sup>4</sup> The second review and opinion often decelerates the progress of proposed legislation. This might be viewed as redundant and disadvantageous, but having a second review is one of the greatest attributes of second chambers. The improvement

---

<sup>2</sup> Library and Archives Canada, Florence Bird Fonds, MG31-D63, Volume 16, Senate of Canada (1), "Talk to Alberta Legislative Interns," 3 February 1982, page 2.

<sup>3</sup> F. A. Kunz, *The Modern Senate of Canada, 1925-1963* (Toronto: University of Toronto Press, 1926), 5.

<sup>4</sup> See Meg Russell, *Reforming the House of Lords: Lessons from Overseas* (Oxford: Oxford University Press, 2000), 21.

upon the legislation and a further public discussion are two factors that are a positive result of this reoccurrence and duplication of the legislative process. People are only human, mistakes and errors will occur. As Robert A. MacKay argued, “This opinion is not necessarily founded on distrust of the people’s ability to govern themselves or on any denial that their will must prevail, but it recognizes certain defects in popular assemblies.”<sup>5</sup> Canada has over thirty-three million people and the legislation passed by the Canadian Parliament will have an effect on them all, as David Smith noted “...two decisions are better than one.”<sup>6</sup> Where there are bicameral systems in place there is an advantageous reoccurrence and duplication of the legislative process where those nations gets the privilege of examining the merits of the proposed legislation twice.

### The Secondary Role of Upper Chambers

In federations, upper chambers also usually perform a second role that of representation of regions, provinces, states and/or territories within the national federal legislature. Countries like Canada, Australia, the United States and Germany have upper chambers in their respective form which act and provide a greater national forum for regions, provinces, states and territories within the federation to voice their concerns within the national parliament or assembly. This is seen in Canada with the Canadian Senate where senators represent all the provinces and territories.

### Legislative Powers

The legislative powers of upper chambers differ throughout the world, and they can typically be divided into three groups. The groups are as follows:<sup>7</sup>

- (a) Those upper chambers that have legislative power equal to those of the lower chamber;
- (b) Those upper chambers that have legislative power equal or almost equal to the lower chamber, but in practice exercise less;

---

<sup>5</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 162.

<sup>6</sup> David E. Smith, *The Canadian Senate in Bicameral Perspective* (Toronto: University of Toronto Press, 2003), 176.

<sup>7</sup> MacKay, *The Unreformed Senate of Canada* (1967), 160.

(c) Those upper chambers that have legislative power less than the lower chamber.

The Canadian Senate would be associated with those upper chambers where its powers are almost equal to the powers of the House of Commons, but in practice exercise less.<sup>8</sup> The Senate is almost equal to the powers of the House of Commons with the exception that the Senate cannot initiate any bill that would either appropriate public funds or generate revenue from a new tax measure; this is found under Section 53 of the *British North America Act*. Any new measure that would increase taxation or spend public funds must originate from the House of Commons, specifically the Cabinet.

### The Canadian Senate

The chief function of the Senate is to legislate, review and examine legislation that is in Parliament. Every bill must be approved and passed in Parliament by the House of Commons and the Senate before receiving Royal Assent. As David E. Smith, R. MacGregor Dawson and W. F. Dawson, have all shown, the Senate's chief function is to consider and complement the House of Commons.<sup>9</sup> More specifically it "...amplifies, clarifies, and scrutinizes legislation..."<sup>10</sup> The Canadian Senate has virtually identical legislative powers to the House of Commons, the lower chamber, yet the Senate is reluctant to block bills, as senators cannot be seen to be acting against the lower elected House of Commons given that senators are appointed rather than democratically elected. The Senate is only limited in its legislative abilities as it cannot initiate 'money bills', however the Senate still possesses the legislative power of an absolute veto on proposed legislation.<sup>11</sup> The Senate has the power to block and reject legislation if the majority of the senators feel it should not pass. However, as Paul Fox noted there is one exception to the veto, "In 1982 Canada's new constitution assigned the Senate only a suspensive veto of 180 days over future constitutional amendments."<sup>12</sup> The Senate and House of

---

<sup>8</sup> Ibid., 162.

<sup>9</sup> Smith, *The Canadian Senate in Bicameral Perspective*, 160; R. MacGregor Dawson and W. F. Dawson, *Democratic Government in Canada* (Toronto: University of Toronto Press, 1971), 67.

<sup>10</sup> Smith, *The Canadian Senate in Bicameral Perspective*, 167.

<sup>11</sup> Ibid., 160.

<sup>12</sup> Paul W. Fox, *Politics: Canada* (Toronto: McGraw-Hill Ryerson Limited, 1982), 527.

Commons are there to work together in Parliament, not be rivals, and beyond constitutional amendments, the veto is present to act as a safeguard from the lower house in moments where the upper house considers it necessary to block legislation.

With respect to Senate membership, there are certain requirements. They include: one must be a Canadian citizen, at least thirty years of age, and a resident in the province or territory that they represent. Within the province they represent they must also own at least four thousand dollars worth of property. This requirement is found under Section 23 of the *British North America Act*. Four thousand dollars is not a vast amount of money by today's standards but in 1867 it was an enormous amount and only a small proportion of the people in Canada could afford it.<sup>13</sup> The appointment of senators is the most controversial aspect of the Canadian Senate. To become a senator, an individual is appointed in the Sovereign's name by the governor general on the advice of the prime minister. The Senate is an appointed body, unlike the House of Commons which its members are elected in a first-past-the-post electoral system. Initially senators were appointed for life, however in 1965 an amendment to the *British North America Act* changed the life-time appointment and senators must retire at the age of seventy-five.<sup>14</sup>

As Canada is a federation of ten provinces and three territories, the second function of the Canadian Senate is representational. The Senate is based on equality of four formal Canadian regions: Ontario, Quebec, Maritime Canada and Western Canada. Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut do not fall within one of the four specific regions of Canada as outlined in Section 22 of the *British North America Act*. One area where the Senate has received a barrage of criticism and demands for reform usually encompass the deficiency of the Senate in articulating and protecting regional and provincial interests.

---

<sup>13</sup> See Patrick Malcolmson and Richard Myers, *The Canadian Regime* (Peterborough ON: Broadview Press, 2005), 132.

<sup>14</sup> Fox, *Politics: Canada*, 527.

**Table 1.1: Current Allocation of Canadian Senate Seats**

Region	Province	Senate Seats - Provincial Total	Senate Seats - Regional Total	Date became Provinces/Territories of Canada
Ontario	Ontario	24	24	1867
Quebec	Quebec	24	24	1867
Maritime Canada	New Brunswick	10	24	1867
	Nova Scotia	10		1867
	Prince Edward Island	4		1873
Western Canada	Manitoba	6	24	1870
	British Columbia	6		1871
	Alberta	6		1905
	Saskatchewan	6		1905
Other	Newfoundland and Labrador	6	9	1949
	Northwest Territories	1		1870
	Yukon	1		1898
	Nunavut	1		1999
<b>SENATE TOTAL</b>		<b>105</b>	<b>105</b>	

### Major Criticisms to the Senate

The Canadian Senate is “...a national disgrace.”<sup>15</sup> The Canadian Senate is a “...legislative hall of shame.”<sup>16</sup> “No political subject provokes more dissatisfied public comment in Canada than its Senate. Rare is the year that passes when someone of note in this country has not been on his feet voicing criticism and seeking the reform or outright abolition of the upper house.”<sup>17</sup> These are just some quotes from the academic literature. As with any subject matter there are major publications surrounding the subject, in regards to the Canadian Senate and surrounding reform most authors have quoted at least one of the following publications: *The Senate of Canada: Its Constitution, Powers and Duties Historically Considered* (1914) by George Ross, *The Unreformed Senate of Canada* (1926, 1963) by Robert A. MacKay, *The Modern Senate of Canada 1926-1963* (1965) by F.A. Kunz, *The Canadian Senate in Bicameral Perspective* (2003) by David E. Smith, and *Protecting Canadian Democracy* (2003) edited by Senator Serge Joyal, finally the most recent is *The Democratic Dilemma* (2009) edited by Jennifer Smith. The

<sup>15</sup> Randall White, *Is Canada Trapped in a Time Warp?* (Toronto: Venture Press, 2001), 53.

<sup>16</sup> Meg Russell, and Mark Sandford, “Why are Second Chambers so Difficult to Reform?” *The Journal of Legislative Studies* Vol. 8, No. 3 (Autumn 2002): 81.

<sup>17</sup> John Turner, “The Senate of Canada – Political Conundrum,” in *Canadian Issues: Essays in Honour of Henry F. Angus*, ed. Robert M. Clark (Toronto: University of Toronto Press, 1961), 57.

subject matter and topics that are contained within these books encompass events and issues surrounding the Senate around the time they were published. The books by Ross, *The Senate of Canada: Its Constitution, Powers and Duties Historically Considered* and MacKay, *The Unreformed Senate of Canada* speaks about the early Senate and the legislative and representative actions it took. F.A. Kunz's book, *The Modern Senate of Canada 1926-1963* discussed the Senate in a larger context within the Canadian Parliament and its sometimes antagonistic exchanges with the House of Commons and Cabinet. Finally the books, *The Canadian Senate in Bicameral Perspective*, *Protecting Canadian Democracy*, and *The Democratic Dilemma* speak about the modern debate on the complexities of reforming the Senate and the failures of reform. The conclusion found in the literature is that there are two major reoccurring criticisms aimed at the current Senate, and they are the appointment of senators, and provincial representation.

### *First Major Criticism: The Appointment of Senators*

An appointed Senate was acceptable in 1867 but now is unacceptable; the undemocratic nature of having senators appointed to their position without election is the main argument for reform.<sup>18</sup> The duty of senatorial appointments falls to the prime minister and the selections are usually partisan appointments. By having one individual decide who becomes a senator, who is undemocratically appointed to their position until the age of 75, and who does not fear losing their seat, are the most important factors in undermining the legitimacy of the Senate.<sup>19</sup> In addition, David E. Smith and David Docherty both have concluded that since the Senate is unelected, it cannot publicly be viewed as a fully legitimate chamber in Canada.<sup>20</sup> The fact that the Senate is free from elections hurts its public image in Canada. The failure to acquire public legitimacy is a serious problem because the Senate is the upper

---

<sup>18</sup> Although having an appointed system is viewed negatively, it has allowed for greater representation of minorities and particularly women in Parliament, to alleviate partial deficiencies as a result of general elections. The prime minister can appoint more women and minorities to the Senate to create a more diverse and representative group of parliamentarians, thus better reflecting the true representation of Canada.

<sup>19</sup> See Campbell Sharman, "Political Legitimacy for an Appointed Senate," *IRPP Choices* Vol. 14, No. 11 (September 2008): 19.

<sup>20</sup> Smith, *The Canadian Senate in Bicameral Perspective*, 58; David Docherty, "The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About," *The Journal of Legislative Studies* Vol. 8, No. 3 (Autumn 2002): 29.



chamber – the chamber that reviews, checks, and occasionally blocks legislation of the lower elected chamber.

### *Second Major Criticism: Provincial Representation*

The appointment of senators by the prime minister and not by the provinces or territories they represent leads to the second major criticism towards the Senate. The senators represent the provinces and territories however Campbell Sharman has suggested that the Senate is failing to do so.<sup>21</sup> In addition, R. MacGregor Dawson and W.F. Dawson have stated, “The Senate, it was hoped, would protect provincial interests....”<sup>22</sup> John Turner argued, “The plain truth of the matter seems to be that the Senate today has very little to do with the provinces.”<sup>23</sup> He continued, “...it is doubtful whether today any provincial government would look towards the Senate as its spokesman or champion.”<sup>24</sup> There is no direct connection to the people or province the senators represent, it is not the province or the people of the province who placed them in the Senate. The lack of control of who gets to represent the provinces results in an institution that as David Docherty suggested, “...struggles for public acceptance and support.”<sup>25</sup> As an appointed body in Parliament, the Senate cannot be viewed “...as a legitimate voice of the regions.”<sup>26</sup> The lack accountable provincial and territorial representation by unelected senators naturally results in the demand for reform. However, as Wilfried Swenden has shown in his work on second chambers in *Federalism and Second Chambers*, senators can vote as provincial or regional group members, if “...one region, or possibly a group of regions, share a common view on a specific issue, irrespective of their party affiliation. In contrast, in the absence of regional block voting, party adherence dominates.”<sup>27</sup> This party adherence is a consistent problem that will be seen in this study.

---

<sup>21</sup> Russell, and Sandford, “Why are Second Chambers so Difficult to Reform?” 81.

<sup>22</sup> Dawson, and Dawson, *Democratic Government in Canada*, 64.

<sup>23</sup> Turner, “The Senate of Canada – Political Conundrum,” 60.

<sup>24</sup> Ibid.

<sup>25</sup> Docherty, “The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About,” 45.

<sup>26</sup> Ibid., 29.

<sup>27</sup> Wilfried Swenden, *Federalism and Second Chambers* (Brussels: Presses Interuniversitaires Européennes, 2004), 65.

## *Demand for Senate Reform*

With major criticisms aimed at the Senate it is to no surprise that individuals have called and been calling for reform for a great number of years. Henri Bourassa has once said that Canadian Senate reform “...comes periodically like other forms of epidemics and current fevers.”<sup>28</sup> The first proposal for Senate reform occurred in 1874 and since then has become “...one of the enduring features of Canadian political life.”<sup>29</sup> The second major call for reform was in 1927, where the matter was discussed at the Dominion – Provincial Conference held in Ottawa.<sup>30</sup> E. Russell Hopkins explained that reform did not follow from these proposals as “...there was little or no chance of agreement on any specific reform or set of reforms.”<sup>31</sup> The lack of agreement on what should be done to the Senate is also an enduring feature of Canadian political life.

There has been an explosion of Senate reform literature in the recent decades as the result of “...incessant intergovernmental conflict and, more positively, as a response to the need for more effective intergovernmental coordination.”<sup>32</sup> One of the principal intergovernmental conflicts surrounded the federal government’s National Energy Program in 1980. The National Energy Program was a program which created new federal taxes and obtained a larger share on petroleum revenues for the federal government.<sup>33</sup> Petroleum is a natural resource that is in the jurisdiction of the provinces. Western Canada, specifically Alberta, was furious as this is where the majority of the petroleum in Canada is located. This was seen as a major infringement on provincial rights. This was connected to Senate reform because the Senate had been set up to protect the regions and provinces, but Western Canada was unable to do much in the Senate because it is greatly outnumbered versus central and

---

<sup>28</sup> Library and Archives Canada, Florence Bird Fonds, MG31-D63, Volume 16, Senate of Canada (1), “Notes on Bill C-640, An act to provide for the structural reform of the Senate of Canada.” No Date, page 1.

<sup>29</sup> See Jack Stilborn, *Senate Reform: Issues and Recent Developments*. Ottawa: Library of Parliament, 21 January 2008. [http://epe.lac-bac.gc.ca/100/200/301/library\\_parliament/backgrounders/2008/senate\\_reform-e/prb0742-e.pdf](http://epe.lac-bac.gc.ca/100/200/301/library_parliament/backgrounders/2008/senate_reform-e/prb0742-e.pdf), 3.

<sup>30</sup> E. Russell Hopkins, “What’s Right About The Senate,” *McGill Law Journal* Vol.8, No. 3 (1962): 168.

<sup>31</sup> Ibid.

<sup>32</sup> Roger Gibbins, *Conflict and Unity: An Introduction to Canadian Political Life* (Scarborough ON: Nelson Canada, 1994), 85.

<sup>33</sup> See Rand Dyck, *Canadian Politics: Critical Approaches* (Scarborough ON: Thomson Nelson, 2004), 60.

Maritime senators. This led political pressure and the academic literature to the famous “Triple-E Senate” reform proposal, which came out of Western Canadian aggravation and formed the framework for Senate reform during the Charlottetown Accord constitutional reform proposal that came out in 1992.

There have been numerous models proposed for reform in the past and the most prevalent is the Triple-E model. The Triple-E model, originated from Alberta, called for a Senate that is elected, effective and equal. Elected where the provinces or the people of Canada decide who receives a seat. Effective in the sense that senators would use their legislative power more frequently to delay or block legislation that they feel is unwarranted by the provinces they represent. Finally, equal in that every province would have the same number of senators. The Triple-E model never succeeded nor has there been any success on the other twenty-eight initiatives in the last thirty years.<sup>34</sup> Twenty-eight initiatives in the last thirty years is a large number and each had their own differences however there are some fundamental similarities surrounding them all. There are three primary areas that the reform proposals surround, they are: the selection of senators, the distribution of Senate seats, and the powers of a reformed Senate.<sup>35</sup> Of the more than twenty-eight more recent proposals or initiatives, these three are the most frequent re-occurring areas that reforms addresses.

### The Failure of Senate Reform

The ultimate failures of the previous reform models have been attributed to the obstacles that are in place which restrict people from reforming the Senate. First the Supreme Court of Canada has ruled that Parliament cannot unilaterally reform the Senate and the provinces must be involved.<sup>36</sup> Second, the *Constitution Act* (1982), states that any changes to the Senate’s powers, senatorial selection and

---

<sup>34</sup> Docherty, “The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About,” 38.

<sup>35</sup> Stilborn. “Senate Reform: Issues and Recent Developments.” 4.

<sup>36</sup> Supreme Court of Canada, *Re: Authority of Parliament in Relation to the Upper House* [1980], 1 S.C.R. 54. In the matter of a Reference by the Governor in Council concerning the legislative authority of the Parliament of Canada in relation to the Upper House, as set out in Order in Council P.C. 1978-3581, dated the 23rd day of November, 1978. <http://scc.lexum.org/en/1979/1980scr1-54/1980scr1-54.html> (Date created unknown, date revised unknown, date last accessed on 1 April 2012).

number of senators per province must be approved under the general amending formula.<sup>37</sup> Third, as Docherty explained, "...most attempts at Senate reform have failed because they have been linked to larger constitutional reform packages. The best hope for change to the structure of the Senate lies in smaller, incremental moves ...."<sup>38</sup> This is the current method that Prime Minister Harper is trying with Bill C-7, *An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits*.<sup>39</sup>

The second conclusion why Senate reform is rather difficult to achieve is that no collective agreement has been reached on what the Senate should be. The barrier of reform is disagreement among the involved parties. As Docherty and George Ross have both argued, what one individual wants the Senate to be often differs greatly from another.<sup>40</sup> Indeed, as Smith notes, if that cannot be determined, "...there will be no agreement on its modification."<sup>41</sup> Should it provide oversight, protection, innovation or representation?<sup>42</sup> How can the Senate be reformed if people cannot agree on what the Senate should be? Senate reform is incredibly difficult because of the formal constitutional restrictions, and that the key stakeholders cannot collectively agree on what to do. As Docherty argued, the subsequent failed attempts have resulted in the Canadian Senate remaining "...one of the last unreformed chambers in Westminster-based parliamentary democracies."<sup>43</sup> The Canadian Parliament and more specifically the Senate, exists today in a very similar form to the way that the Fathers of Confederation created it in 1867. It is beneficial and healthy in democratic nations such as Canada to have debates about reforming parts of the Canadian Parliament.

---

<sup>37</sup> Stilborn. "Senate Reform: Issues and Recent Developments." 9.

<sup>38</sup> Docherty, "The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About," 28.

<sup>39</sup> Parliament of Canada. "Bill C-7 - *An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits*."

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5101177&file=4>

(Date created unknown, date last accessed on 31 August 2011).

<sup>40</sup> See David Docherty, *Legislatures* (Vancouver: University of British Columbia Press, 2005), 177; and George Ross, *The Senate of Canada: Its Constitution, Powers, and Duties Historically Considered* (Toronto: The Copp, Clark Company Limited, 1914), 96.

<sup>41</sup> Smith, *The Canadian Senate in Bicameral Perspective*, 157.

<sup>42</sup> Ibid., 154.

<sup>43</sup> Docherty, "The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About," 27.

## **Why are Second Chambers so Difficult to Reform?**

Meg Russell and Mark Sandford, detailed five barriers associated with reform, which can easily be applied to Canada. The barriers to reform consist of: constitutional rigidity, wider constitutional disputes, vested interests in the status quo, the attitude of the government and finally public opinion.<sup>44</sup> This is true for Canada as the Canadian Constitution is fairly rigid concerning Senate reform. It is easy for other topics to be brought to the table when a discussion starts on the topic of Senate reform. The prime minister currently enjoys a great deal of power and influence with the status quo and reform might upset and diminish that. Some political parties and governments simply do not consider Senate reform to be a significant issue when there are more prominent issues in their agendas. Finally it is difficult to fully convince the opinion of the nation that Senate reform ought to occur when there are so many other vital issues which could be seen as more important that ought to be addressed before reforming Canada's upper chamber. In part, all of this encapsulates why there has been limited reform to the Senate since 1867.

## **Framework of the Study**

The existing academic literature surrounding the Canadian Senate provides significant criticism aimed at the modern Senate with its lacklustre performance and need of reform. However, there appears to be a gap in the literature surrounding the performance of the Senate in its early years of existence, there is value in looking at the past and addressing this lacuna is important in order to consider whether the Senate ever performed as those who designed the institution had intended. The question that comes to mind: What about the Senate's performance following its creation immediately after Confederation in 1867? This thesis analyzes the original intentions for the Canadian Senate, developed by the Fathers of Confederation and shows how the architects of the Senate regarded it as a chamber for sober second thought. The thesis then considers the extent to which the senators followed the founders' intentions when legislating over three government bills that were blocked in the Senate during the first sixty years of its existence. There is not much focus on the early years and early actions of the Senate in the context of the major reoccurring

---

<sup>44</sup> See Russell, and Sandford, "Why are Second Chambers so Difficult to Reform?" 83-87.

themes and criticism towards the Senate. It is easy for one to state the modern Senate needs reform as the current Senate is an easy target which has had little formal reform to it, but this thesis analyzes the Senate in a period immediately following its creation and examined if it performed as intended.

An analysis of the original intentions of the Fathers of Confederation is critical because it is those intentions which act as a baseline to scrutinize the Senate in a post-Confederation era. There were two primary intentions established for the Senate during the Confederation Conferences in the years immediately prior to 1867. The first surrounded independent deliberation and representation. It was established that the Senate's membership would be by appointment, not popular election. By having an appointed Senate, it would be more independent.<sup>45</sup> The goal, as MacKay noted, "...was to render the upper house a thoroughly independent body – one that would be in the best position to canvass dispassionately the measures of (the lower house)."<sup>46</sup> Since the senators would not face recurrent elections, it was hoped that they would evaluate legislation on what would be right for Canada. The Fathers of Confederation concluded that by having an appointed Senate, it would lead to a greater independent upper chamber to evaluate legislation. The Senate, as John A. Macdonald famously conveyed was to provide a "...sober second thought in legislation."<sup>47</sup> An independent sober second thought was to be imparted on the legislation passed by the House of Commons.

The second intention established for the Senate was that it be a protector of rights. The Senate is based on provincial representation and senators come from each province and territory. However, the Fathers of Confederation did not have the intention that the Senate would be the great protector of provincial rights. The Senate was intended to be the last means of defence and never the chief line of protection.<sup>48</sup> The Senate was intended to legislate at a distance from the strong gusts of public passion, not to be swayed but to independently evaluate legislation for its true merits for the benefit of Canada, even if it went against the wishes of certain regions, provinces, governments or foreign nations. The Senate was also provided with strong

---

<sup>45</sup> See MacKay, *The Unreformed Senate of Canada* (1967), 40.

<sup>46</sup> Ibid.

<sup>47</sup> Citation from P.B. Waite, *The Confederation Debates in the Province of Canada – 1865* (Toronto: McClelland and Stewart, 1969), 49.

<sup>48</sup> See MacKay, *The Unreformed Senate of Canada* (1967), 44.

legislative powers, to be exercised when it thought proper to block legislation from passing.

### **Methodology, Research Methods and Data Collection**

In the academic literature surrounding the Senate and Senate reform, there is a tendency to list of bills that were passed, greatly amended, or blocked by the Senate. These bills tend to be the focus for subsequent models of reform. It was rather conclusive that if an in-depth analysis on the early Senate occurred, the examination of bills that were passed, amended or blocked by the Senate would be needed. The focus in this study is on three bills which were blocked. Why examine blocked bills? The blockage of a bill that has been approved by the lower chamber is the most significant action the upper chamber could perform. Blockage means the Senate actively and knowingly stopped it from further passage to Royal Assent. For breadth in case selection, I selected a number of bills that were blocked in a variety of manners, as blockage takes many forms in the Canadian Parliament. This thesis focused on government bills that passed through the House of Commons but were blocked by the Senate. There were many government bills which were blocked by the Senate during the first sixty years of Confederation. The three specific bills analyzed in this thesis are the Esquimalt and Nanaimo Railway Bill, the Naval Aid Bill, and the Old Age Pension Bill.

### **The Selection of the Specific Blocked Bills**

Selecting specific early bills provided the largest contribution to knowledge as there was a gap in the literature on early government bills in the Canadian Parliament immediately following Confederation. An important facet to selecting cases is the question of generalizability. Although these three bills are distinct in their significance, nevertheless I would argue that they are not distinct in a manner of being deficient of any generalizability. They have applicability because there have been and there will be in the future, bills that will either involve provincial concerns, national concerns or international concerns that will have very similar characteristics as one of the three above that entered Parliament. In later studies these three bills could be compared and contrasted between more modern bills that were blocked.

## Timeframe

The initial step in the selection of government bills was to set out some criteria, primarily the time frame to study within. The first sixty years of the Senate was a period in which little had changed within the Senate since Confederation, and not enough time had lapsed yet in Canadian political history for the Senate to have evolved away from its creation and there remained a large degree of preservation from its origins in 1867. Because of the degree of preservation that the Senate withstood during the first sixty years, the intentions of the Fathers of Confederation were allowed to be more rigorously applied.

The first sixty years was chosen for a number of other related factors. First it allowed for successive governments to form under a number of different prime ministers which allowed the introduction of government legislation introduced from Conservative and Liberal governments. The time period additionally allowed for the analysis of government bills blocked in the Senate originating from a minority government in the House of Commons. Second, senators sat for life in the Senate which resulted in a slower turnover of new senators entering the Senate, the sixty year time frame allowed for new senators to enter the chamber and evaluate legislation. Finally, this timeframe allowed for the delay in alternation of political party control of the Senate between both major political parties to have formed the government.

In this thesis the focus was on new major government bills that were purposely blocked by the Senate that encompassed provincially, nationally and internationally related bills. It was concluded that during the first sixty years of Confederation, twenty-three bills were blocked from passage in the Senate.<sup>49</sup> This equates to approximately 0.923% of government bills introduced in the House of Commons were blocked by the Senate during the first sixty years of post-Confederation history. These twenty-three bills dealt with railways, financial assistance, representation in the House of Commons, appointment of federal judges, and naval battleships. Focusing and performing an in-depth analysis on twenty-three

---

<sup>49</sup> Author's methodological elimination process from list provided at: Parliament of Canada, "Bills Sent to the Other House that did not Receive Royal Assent." Legislation, <http://www2.parl.gc.ca/Parlinfo/compilations/houseofcommons/legislation/billsbyresults.aspx> (Date created unknown, date last accessed on 31 August 2011).



blocked bills would have been far too great of a number to examine. A further elimination took place which narrowed the list to three bills that ultimately equated to a representative sample of the government bills blocked by the Senate. The detailed justification for selection and the core elements of the three selected blocked bills are found below.

### The Esquimalt and Nanaimo Railway Bill

The Esquimalt and Nanaimo Railway Bill (1875) marked the “...first major legislative confrontation between the Senate and House of Commons...”<sup>50</sup> The first of anything is always an important unit to study as many things could be learnt from this exceptional case which would advance and provide an increased level of understanding as to why the Senate took the action that it did. The bill called for the construction of a railway between the towns of Esquimalt and Nanaimo, which are on Vancouver Island in the Western Canadian province of British Columbia. The blockage outraged the provincial government of British Columbia and the Dominion Government incurred the charge of perfidy.<sup>51</sup> The House of Commons was controlled by a Liberal majority government under Alexander Mackenzie, and his Government introduced the bill. The Senate was controlled in majority by the opposing Conservative Party. The Esquimalt and Nanaimo Railway Bill was a considerable piece of legislation on the provincial level. Its introduction was also in part dictated by the British Government.

This study is in part trying to understand the reasoning behind the Senate’s actions of blockage towards a variety of bills and breadth was one of the goals trying to be achieved in the selection of specific bills for this study. There were ten other railway bills that were blocked by the Senate on the list and breadth would not have been achieved if the study focused primarily or solely on railway bills. Additionally, removal of further bills took place because they, like the Esquimalt and Nanaimo Railway Bill were bills blocked by the same Senate and under Prime Minister Alexander Mackenzie. The research design for this study aims for an analysis on the

---

<sup>50</sup> Senate of Canada, “A Legislative and Historical Overview of the Senate of Canada.” Committees and Private Legislation Directorate, <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-E/pub-E/legislative-e.htm> (Date created unknown, date revised May 2001, date last accessed on 31 August 2011).

<sup>51</sup> See MacKay, *The Unreformed Senate of Canada* (1967), 97.

Senate's legislative actions over a sixty year period and not specifically during one prime minister; hence the additional removal of the other blocked bills during the Liberal premiership of Alexander Mackenzie and the Conservative controlled Senate.

The Senate legislates over a variety of different bills, some are provincially, nationally, or internationally related, while others deal with economic and social issues. One of the primary objectives of this thesis is to examine a diversified selection of blocked legislation. With respect to the Esquimalt and Nanaimo Railway Bill, this bill fell within the category of provincially related legislation blocked by the Senate. The removal of the remaining provincially related bills then occurred.

### The Naval Aid Bill

On the list of remaining blocked bills, the Naval Aid Bill (1912) was the most prominent. If passed this bill would have provided the British Government with thirty-five million dollars which would have been directly put forth for the construction of three Dreadnought battleships for the Royal Navy. Prime Minister Robert Borden's Government introduced the bill into the Conservative-controlled House of Commons. The debate in the House of Commons generated enormous interest throughout Canada, and the debate was one of the most turbulent and prolonged in Canadian history.<sup>52</sup> The debate lasted months, it was truly historical in proportion, it broke parliamentary records and engulfed the attention of the public. Throughout the months of debate, opinions solidified and, for the first time in Canada, the bill only passed through the House of Commons with the adoption of rules for closure.<sup>53</sup> However Borden's predecessor, the leader of the opposition, was Liberal Wilfrid Laurier, who had appointed many Liberals to the Senate while he was prime minister and the Liberals were in firm control of the Senate. The bill was an internationally significant piece of legislation surrounding Canadian national development. Its introduction into the Canadian Parliament was also at the request of the British Government.

The decision to include the Naval Aid Bill was again based on strategic and calculated case selection. When the Naval Aid Bill was introduced in 1912, there was a Conservative government and the Liberals were no longer in control of the House

---

<sup>52</sup> Ibid., 99.

<sup>53</sup> Ibid.

of Commons. However, Liberals not Conservatives had control in the Senate. This was an important fact with the decision to include the Naval Aid Bill with respect to the research question because the Senate as an institution needs to adhere to its founding principles over a number of decades. Certain areas of criteria and breadth had been filled with the inclusion of the Esquimalt and Nanaimo Railway Bill and the Naval Aid Bill. There was still a gap for a wider representation of legislation under different scenarios of Liberal and Conservative dominance in the lower and upper chambers. The focus was then on selecting one final bill that was blocked in the Senate during the Liberal minority-government of Prime Minister William Lyon Mackenzie King.

### The Old Age Pension Bill

The Old Age Pension Bill (1926) was of national significance surrounding the social welfare of old aged Canadians. The bill would have provided eligible Canadians with a monthly pension, where the federal and provincial governments would halve the cost equally. The parliamentary dynamics were of great interest as well. An election had just ended which saw the Liberals form a minority government, much to the displeasure of the Conservatives because it was the Conservatives who obtained the most seats in the House of Commons. The Conservatives did not obtain enough to have a majority, so the Liberal party worked with the Progressive and the Labour parties to form a razor-thin minority government. The Labour members demanded social welfare legislation in the form of old age pensions, in return for their critically needed support. The introduction of the bill in Parliament was argued as a surprise as it was not in any election manifesto nor mentioned in the Speech from the Throne.

With the inclusion of the final case study I had purposely and strategically selected three important legislative bills that were blocked by the Senate during the first sixty years of its existence. These three bills were strategically selected because of their similarities to other blocked legislation by the Senate during this time as they represented legislation related to either a provincial, national or international issue. Together these three bills are a representative sample of legislation because they occurred throughout different political compositions commonly found in Canada,

being either Conservative or Liberal controlled House of Commons and Conservative or Liberal controlled Senate – with even the inclusion of a minority government.

### Data Collection and Triangulation

The framework for the collection of primary source data on these historical cases was in accordance with the triangulation strategy which involved information gathered from three specific, yet dynamically different sources. Triangulation originated from navigation and military strategy that uses various reference points to establish an exact position and by the utilization of multiple viewpoints it allows for superior accuracy.<sup>54</sup> The collection of primary source data provided information on each bill from a number of angles. The information gathered was from several different data classes, and this resulted in the production of a more complete picture of these three bills.<sup>55</sup> Three main sources of primary data were gathered from Hansard, newspaper articles, and finally archival documents.

Hansard enabled an understanding of what the parliamentarians considered to be the main issues surrounding the three blocked bills. Within its record show how partial or impartial the parliamentarians were. If the Canadian Senate were setup to act as an independent sober second thought, how politically biased were the arguments in favour and against each bill in the Senate versus the arguments used in the House of Commons?

Newspapers contain vital information such as public opinion that are obviously absent from the official debates in Parliament. The *Globe* (currently known as the *Globe and Mail*) acted as the primary national newspaper and anchor (a constant newspaper) from which information was gathered for the three blocked bills. The *Globe* has a long history and was in print before Confederation; it is considered a credible national newspaper in Canada. The other metropolitan newspaper is the *Gazette* (Montreal). Other newspapers, which represented provided small town and rural viewpoints outside the major cities that were included were the

---

<sup>54</sup> See Todd D. Jick, "Mixing Qualitative and Quantitative Methods: Triangulation in Action," *Administrative Science Quarterly* Vol. 24, No. 4 (December 1979): 602.

<sup>55</sup> See Udo Kelle, "Sociological Explanations between Micro and Macro and the Integration of Qualitative and Quantitative Methods," *Forum: Qualitative Social Research* Vol. 2, No. 1, Art. 5 (February 2001): 3.

*British Colonist* (Victoria), the *Morning Chronicle* (Halifax), and the *Manitoba Free Press* (Winnipeg). They were included to act as complementary and contrasting agents, and to avoid a metropolitan bias. I imposed a number of questions on the newspaper material. What happened to be the general public consensus regarding the passage or blockage of the bills? Was the public opinion in the newspapers more favourable of the bills receiving Royal Assent or were they not? What can be concluded regarding the public's perception in the newspapers surrounding the actions in the Senate?

Further information was gathered from archival sources held at Library and Archives Canada. The archival documentation provided a wealth of information and an additional dimension, which is needed in the triangulation strategy. Some of the documents included: Justice Canada files regarding the legality of the Old Age Pension Bill, Privy Council documentation regarding the Esquimalt and Nanaimo Railway Bill, and so forth. Particular questions that were imposed during the analysis of the archival documents include: Can this document provide a further indicator into the Senate's action as to why it blocked one of the three bills? Can any of the documents provide insight to the inner private workings of the Canadian Senate? Would anything indicate per se that the prime minister, government ministers or the leader of the opposition tried to influence the Senate's votes from going one way or the other? Was there anything written to specifically and conclusively state that specific political parties should vote as a group against the bills ('toe the party line')?

Gathering information from the three sources was exceptional as data was collected from official parliamentary records, public opinion on record, finally private and candid records, each providing an aspect to these three blocked bills in the Senate that the other source could not provide.

## **Argument**

This thesis provides knowledge, perspectives and dimensions on the actions conducted by the Senate during the first sixty years after Confederation. By evaluating the Senate's legislative actions surrounding proposed legislation, this thesis generates an analysis that assists and benefits the larger topic of Canadian Senate behaviour regarding government bills and the topic surrounding Senate

reform. The evaluation of the Senate immediately after Confederation is interesting because one could look at Confederation as an event on reform in that a new Senate was created. It is relevant in the modern day because some want to create a new reformed Senate and with that comes their expectations of how a new Senate should perform. The thesis argues that the senators provided a well informed, critical sober second thought when it debated, and then blocked, three important government bills during the first sixty years of Confederation. However, the issue and dynamics of partisan voting, that had concerned the Fathers of Confederation, affected the independence of the Senate and the legislative outcomes in each case.

## **Chapter Two: The Intentions of the Fathers of Confederation**

## **Introduction**

The Fathers of Confederation were the architects who created the Canadian Senate. The Fathers of Confederation generated a number of intentions for the multifaceted upper chamber in Canada's new Parliament and the understanding of the intentions of these individuals for the Senate is critical as it establishes the baseline to evaluate the performance of the Senate immediately after Confederation. It is important for one to recognize what the original intentions were to scrutinize the institution accurately; it would be unfair to state the Senate did not perform at a level which it was never originally intended. This chapter examines what the Fathers of Confederation specifically intended for the Canadian Senate.

## **British North America Before 1867**

Before the examination of the discussions at the Confederation Conferences occur, which established the Senate, one needs to explore the political and driving forces which preceded and ultimately influenced the intentions of the Fathers of Confederation. In 1867 the British North American colonies formally began uniting into a federation. However, the history of what is now known as Canada started many years prior. All of the British North American colonies had achieved some set of political institutions by 1791 that included representative government in an elected legislative assembly.<sup>1</sup> By 1851, these colonies had established and operated on the basis that the cabinet resigned if it lost the confidence of the elected legislative assembly, responsible government had been established.<sup>2</sup> Although responsible government had been established, the population of British North America was still rather small, in 1861 Canada West (Ontario) had 1.4 million people, Canada East (Quebec) had 1.1 million people, Nova Scotia had 330,000 people, New Brunswick had 252,000 and there were 80,000 people in Prince Edward Island.<sup>3</sup> In essence, as Alexander Brady observed, the British North American territory consisted of, "...little more than scanty pockets of settlement subsisting on farms, fisheries, forest

---

<sup>1</sup> See Rand Dyck, *Canadian Politics: Critical Approaches* (Scarborough ON: Thomson Nelson, 2004), 26.

<sup>2</sup> Ibid., 27.

<sup>3</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Province*, 3<sup>rd</sup> Session, 8<sup>th</sup> Parliament, (7 March 1865), p. 753 (Mr. Scatcherd, Member of Provincial Parliament).



industries, and localized manufactures.”<sup>4</sup> Although they were small, there was consistent population growth during this time – particularly in Canada West where they experienced a rapid expansion from a constant stream of immigrants notably from the United Kingdom and they were filling up the vast farmlands and establishing prosperous commercial towns.<sup>5</sup> The social expansion and economic growth for Canada West (Ontario) was extraordinary. However as a result of this growth, Canada West, under the leadership of George Brown wanted more political strength in the united Province of Canada (Canada West and Canada East).

### Political Deadlock in the Province of Canada

There was political instability and deadlock between the major political figures and political parties from Canada West and Canada East. There was a need for major reform to the bicameral political system in the Province of Canada as the system that had been established with the Act of Union uniting Canada West and East was not functioning well. To conduct successive legislative business was difficult, and it was rather challenging to get legislation passed. One politician, Étienne-Paschal Taché, stated during the parliamentary debates on Confederation in the Provincial Parliament of Canada, “Legislation in (the Province of Canada) for the last two years had come almost to a stand still, and if any one would refer to the Statute Book since 1862, he would find that the only public measures there inscribed had been passed simply by the permission of the Opposition.”<sup>6</sup> The second difficulty was that any major decision in the united province had to be approved upon by the system as a whole, for instance a local issue in Canada East had to get approval from the politicians from Canada West and vice versa.<sup>7</sup> This required the approval of a ‘double majority’ where a majority was required from both members of the legislature from Canada West and Canada East, in order to pass a measure.<sup>8</sup> A simple majority at large in the legislature did not suffice. There were numerous problems

---

<sup>4</sup> Alexander Brady, *Democracy in the Dominions* (Toronto: University of Toronto Press, 1947), 40.

<sup>5</sup> See Christopher Moore, *1867: How the Fathers Made a Deal* (Toronto: McClelland and Stewart Ltd., 1997), 4-5.

<sup>6</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (3 February 1865), p. 9 (Mr. Taché, Premier of the Province of Canada).

<sup>7</sup> See Dyck, *Canadian Politics: Critical Approaches*, 27.

<sup>8</sup> Ibid.

with this convention. Canada West and Canada East were each equally represented in the provincial parliament. As D.G. Creighton argued, they each possessed the same political strength.<sup>9</sup> Many political deadlocks developed as a result of the equality in representation in the united province. Francis Hincks, a representative from Canada West explained why political deadlock developed, “The truth was that the people occupying (Canada West) and (Canada East) were not homogeneous; but they differed in feelings, language, laws, religion and institutions and therefore the union must be considered as between two distinct peoples....”<sup>10</sup> There were distinct peoples each wanting and striving for something different, yet they were politically equal and approval had to be granted by both sections to proceed with measures initiated in the provincial parliament, naturally disagreements occurred. A new bicameral parliament with structurally different chambers was appealing to both Canadas.

During this time Canada West was growing rapidly in population compared to Canada East and George Brown cried for change. George Brown and other Reformers persistently argued for representation by population and they wanted reform. Reformers wanted freedom from a “...rigid and paralysing constitutional framework in which (Canada West) was imprisoned.”<sup>11</sup> As Ged Martin noted, restructuring was needed and necessary because “...it was impossible to maintain the existing structure, with its artificial equality of representation between the two sections... [and] (Canada West’s) rapid population growth....”<sup>12</sup> George Brown demanded a larger share of political power for Canada West.<sup>13</sup> The strength of George Brown’s argument for representation by population grew, particularly as difficulties in achieving legislation became more apparent and the need for reform increased. At the same time, the French-Canadian population in Canada East feared the inevitable of being swamped, and the need for avenues to protect French-Canadian interests grew. Such interests could, in part, be protected in a Senate.

---

<sup>9</sup> D.G. Creighton, *The Road to Confederation– The Emergence of Canada: 1863-1867* (Toronto: Macmillan of Canada, 1964), 44.

<sup>10</sup> Moore, *1867: How the Fathers Made a Deal*, 15.

<sup>11</sup> Creighton, *The Road to Confederation- The Emergence of Canada: 1863-1867*, 43.

<sup>12</sup> Ged Martin, *Britain and the Origins of Canadian Confederation, 1837-67* (London: Macmillan Press Ltd., 1995), 47.

<sup>13</sup> Ibid.

The upper chamber in the bicameral parliament of the Province of Canada, known as the Legislative Council, posed additional problems that required reform. These are important to understand, not least because the Legislative Council was the predecessor to the Canadian Senate and its councillors were elected by popular vote. Responsible government had been established with the government being responsible to the lower chamber with respect to financial and confidence matters. The elected upper chamber in the Province of Canada started to be antagonistic towards the fundamental establishment of responsible government in a Westminster style parliament where the upper chamber has a limited role with respect to financial legislation. The problem started when the councillors considered that they had a popular mandate to assume responsibility for the finances in the province.<sup>14</sup> This created a number of clashes and challenges between the upper and lower house in the provincial legislature and between the upper house and the ruling Government.<sup>15</sup>

A final difficulty in the Province of Canada was of political instability. Between May 1862 and June 1864, the Province of Canada experienced five different governments.<sup>16</sup> To make matters worse the political situation in the Province of Canada did not appear to be rectifying itself any time soon. As P.B. Waite has noted, "The two sections of the province pulled against each other more and more; the years had made the knot tighter, harder, more impossible to undo. In fact it could not be undone. It demanded a heroic remedy, not a patient unravelling."<sup>17</sup> The remedy to solve the toxicity of the political scene in the Province of Canada was to start afresh by devising a new constitutional settlement and designing a new set of institutions to reflect those constitutional arrangements. While the political situation in the Province of Canada was growing from bad to worse, other interesting developments were occurring in the province and also in the Maritime colonies, the eastern region of British North America.

---

<sup>14</sup> See Library and Archives Canada, Wishart Robertson Fonds, R9206 #3, "Miscellaneous Papers Regarding Senate Reform" series, 3-11, 1954. Norman Lambert, *Reform of the Senate* (Winnipeg Free Press Pamphlet No. 30, April 1950), page 5.

<sup>15</sup> Ibid.

<sup>16</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (3 February 1865), p. 9 (Mr. Taché, Premier of the Province of Canada).

<sup>17</sup> P.B. Waite, *The Life and Times of Confederation 1864-1867* (Toronto: University of Toronto Press, 1962), 35.

### Driving Forces Towards A Larger Union

One idea that emerged during this time was a larger union of all the British North American colonies. The creation of local governments to handle distinctively local interests and a central government to handle large, common interests of the entire country – the primary essentials of a federation – was attractive to the Province of Canada and the Maritime Colonies. This was attractive as many politicians in British North America, particularly in Canada East, were uncomfortable with large central governments handling distinctly local issues, where local politicians should be the deciders and not politicians handling national issues.<sup>18</sup> The desire for a large union among the British North American colonies was not established simply on the basis of political deadlock in the Province of Canada as there were other significant political, economic and security forces which came into play.

#### *Political Forces*

One of the primary motives towards a confederation by the Province of Canada was the desire for more effective government. As Ged Martin has argued, confederation would “...secure good government and political harmony to the country.”<sup>19</sup> This was needed with respect to the constant political deadlock between the allied political parties in the Province of Canada’s legislature and the requirement of a double majority for the passage of legislation. There was a political toxicity within the Province of Canada and some change was needed. The move towards Confederation was designed to solve this, not least because it provided the opportunity for respected leaders from each colony to meet together at three major conferences in Charlottetown, Quebec City and London, in order to create a new political system for a new united country.<sup>20</sup> The leaders knew what worked and what did not, they viewed other country’s political arrangements and they created and adopted a system which they thought would best suit the united colonies of British North America.

---

<sup>18</sup> See Dyck, *Canadian Politics: Critical Approaches*, 27.

<sup>19</sup> Martin, *Britain and the Origins of Canadian Confederation, 1837-67*, 35.

<sup>20</sup> The Charlottetown Confederation Conference was held in Charlottetown, Prince Edward Island between 1 – 9 September 1864; The Quebec Confederation Conference was held in Quebec City, Quebec between 10 – 27 October 1864; The London Confederation Conference was held in London, England between December 1866 until March 1867.

### *Economic Forces*

Economic factors and incentives played an additional role in entertaining the idea of uniting the British North American colonies together. For example, many of the political leaders in the colonies who were considering union anticipated that a confederation would enhance trade between them.<sup>21</sup> Commercial elites in the British North American colonies considered that confederation would expand trading empires in the colonies because increasing internal trade would place the federal government in a better position to create an inter-colonial railway from the Province of Canada to the eastern colonies of British North America.<sup>22</sup> The increased trade would naturally increase the demand for better infrastructure links to trade commerce. In addition, the new inter-colonial railway was viewed favourably by many politicians in the Maritime colonies because of the prospective potential to generate new forms of local revenue and trade for their home colonies to grow and prosper. This railway was a grand undertaking, something a small colony might have great difficulty achieving, as such an undertaking would need great amounts of capital and a large organization to create and manage it. A strong central government would have the resources to achieve such a scheme. It could also afford and finance such a large capital project. This could be done if the colonies united into one large union.

### *Security Factors*

The national security of the British North America colonies was a growing concern. The United States of America was never a realistic threat to the security of the colonies until 1861. Before 1861 the British armed forces in the colonies were stronger than the armed forces in the United States and could resist any offensive manoeuvres on British North American soil.<sup>23</sup> That all changed when civil war broke out in the United States in April 1861 and the United States developed a skilled and powerful army as it became increasingly militarized.<sup>24</sup> This was a threat to the small un-united colonies north of the border that feared possible American annexation. The “...temptation to aggression...” was increased and then became feared.<sup>25</sup> If

---

<sup>21</sup> See Martin, *Britain and the Origins of Canadian Confederation, 1837-67*, 24.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., 12.

<sup>24</sup> Ibid.

<sup>25</sup> Ibid., 185.

confederation occurred the colonies could collaborate and strengthen the defences of the colonies to better protect against aggressive events from the United States.<sup>26</sup> A united British North America would have collective resources to better defend the country against an attack, and it would be more difficult to annex a large geographical country rather than a small colonial territory. The need for defence against the Americans was a strong incentive to unite.

### British Support

Britain was pushing the British North American colonies towards greater independence. As Martin noted, Britain considered that a union, together with the creation of some armed force in “Canada” would make the colonies “...better prepared to stand alone in the world.”<sup>27</sup> In addition, as Robert MacKay observed, the colonies themselves of British North America could not say, “...how far Great Britain would be able to aid them, or indeed, how far (Britain) would be willing to aid...” them in a crisis.<sup>28</sup> In short, union among the colonies offered greater independent prospects of stronger defence.<sup>29</sup> As time progressed, Britain lost incentive in supporting British North America and reduced financial support to the colonies.<sup>30</sup> The colonies would have to find other means of supporting themselves – to be independent and self reliant. There was active encouragement by Britain for the colonies to unite into one large country. The messages supporting Confederation by Britain were so strong that, “By the mid-1860s, not a single significant voice was raised in opposition to Confederation, thus demonstrating that a consensus had developed among the political elite, a shared view of the future of British North America....”<sup>31</sup> In essence, the British government was saying, ‘We support you because we do not want to support you’ – crude but true.

---

<sup>26</sup> Ibid., 55.

<sup>27</sup> Martin, *Britain and the Origins of Canadian Confederation, 1837-67*, 157.

<sup>28</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (London: Oxford University Press, 1926), 35.

<sup>29</sup> Ibid.

<sup>30</sup> Peter H. Russell, *Constitutional Odyssey* (Toronto: University of Toronto Press, 2004), 16.

<sup>31</sup> Martin, *Britain and the Origins of Canadian Confederation, 1837-67*, 154.

## Maritime Union Proposed

A wide range of factors influenced the political leaders from the colonies of British North America towards forming a confederation among them. In Maritime Canada, the colonies of Nova Scotia, New Brunswick and Prince Edward Island started to discuss a Maritime Union concurrently while the Province of Canada was experiencing political difficulties. Internal and external pressures on the Maritime colonies led the political leaders of these three colonies to hold a conference to discuss the formation of a new Maritime Union. Resolutions were passed in all three colonial legislative chambers agreeing upon the principles of a union and to meet in Charlottetown, Prince Edward Island on 1 September 1864 to discuss union.<sup>32</sup> Before it actually started, news of the conference spread to the Province of Canada, whose leaders considered that, in light of the difficulties being experienced in an era of deadlock, the discussions in Charlottetown provided a perfect opportunity for change. The Governor General of Canada wrote to his counterparts in the Maritimes and sent notice that the Canadian government wished to send a number of delegates of their own to the conference.<sup>33</sup> The Canadians wished to attend and “...ascertain whether the proposed union may not be made to embrace the whole of British North American provinces.”<sup>34</sup> The Maritimers agreed to the Canadian request but the original mandate to discuss Maritime union was first and foremost on the agenda.

## The Confederation Conferences

### The Charlottetown Conference – 1-9 September 1864

Once the Conference began on 1 September 1864, the Canadians essentially took over and led the main discussions towards a larger British North American union. The idea of a small Maritime union was effectively marginalized.<sup>35</sup> As Russell argued, “While the Maritimers had not accepted all the details of the Canadians’ scheme, they did agree to set aside the Maritime union project and to make a federal union of British North America their constitutional priority.”<sup>36</sup> However not all the

---

<sup>32</sup> See E.C. Bolton and H.H. Webber, *The Confederation of British North America* (London: Chapman and Hall, 1866), 57.

<sup>33</sup> See Creighton, *The Road to Confederation- The Emergence of Canada: 1863-1867*, 37-38.

<sup>34</sup> Ibid.

<sup>35</sup> Moore, *1867: How the Fathers Made a Deal*, 53.

<sup>36</sup> Russell, *Constitutional Odyssey*, 22.

colonial leaders agreed with the idea of a larger union. From the outset, Prince Edward Island was not very enthusiastic about the proposal for a Maritime union, let alone an even larger union including the Province of Canada.<sup>37</sup> Nonetheless, many other leaders were in general agreement that a union would be better than no union at all. Étienne-Paschal Taché from Canada East said, "...the object of the Conference was to do away with some of the internal hindrances to trade, and to unite the Provinces for mutual defence. Without unity of action and comity of sentiment a great Country could not expect to exist."<sup>38</sup>

The Charlottetown Conference was received as a success and, with their spirits raised by the general consensus of uniting the colonies, the delegates agreed to meet again in Quebec. They knew that the creation of a new constitution could be divisive and, as Moore notes, "...accepted that unanimity was not to be expected and disagreement had to be allowed for."<sup>39</sup> After all, these men were skilled politicians and provincial representatives. As Melvin O. Hammond reflected, "These were the cream of the statesmen of their day. Both parties gave of their best. Each man was in his prime...."<sup>40</sup> The Charlottetown Conference created the foundations for discussion, debate, and eventual agreement at the Quebec Conference, in October 1864, concerning the union of key British North American colonies.

### The Quebec Conference – 10-27 October 1864

Out of the discussions at Charlottetown, came the Quebec Conference where the delegates came from the Province of Canada, New Brunswick, Nova Scotia, and Prince Edward Island, and discussed the union of the British North American colonies in greater detail. Russell has observed how the specifics of the union were considered, debated, argued and finally agreed upon with the production of a striking document of seventy-two resolutions that these Fathers of Confederation and framers of the Constitution established. The seventy-two resolutions that were worked out, "...covered nearly all of what was to be contained in the *British North America*

---

<sup>37</sup> See Moore, 1867: *How the Fathers Made a Deal*, 46.

<sup>38</sup> Cited in Arthur George Doughty, "Notes on the Quebec Conference, 1864," *The Canadian Historical Review* Vol. 1, No. 1. (March 1920), 27.

<sup>39</sup> Moore, 1867: *How the Fathers Made a Deal*, xii.

<sup>40</sup> Melvin O. Hammond, *Confederation and its Leaders* (Toronto: McClelland, Goodchild and Stewart, 1917), 6.



Act.”<sup>41</sup> The seventy-two resolutions created the framework of unity among the colonies. Federalism and bicameralism were two major aspects of the seventy-two resolutions.

### Federalism Agreed Upon

Federalism is a system based on a division of authority between the central government (federal government) and the local governments (provincial governments). George- Étienne Cartier, from Canada East stated, “We thought that a federation scheme was the best because these provinces are peopled by different nations and by peoples of different religions.”<sup>42</sup> Within this federal union, there would be a federal government charged with matters that are of common interest to the entire federation, and provincial governments to control local matters and to protect diversified interests within each province.<sup>43</sup> Federalism with the division of powers was determined to be the only acceptable form of government that pleased the majority of delegates at Quebec because, as Leonard Tilley from New Brunswick commented, “What (the federal government) had acquired, were Imperial powers transferred from London, rather than local powers removed from the provinces.”<sup>44</sup> The explicit powers that would be controlled by the federal government were considered to be the main functions of a national government.<sup>45</sup> Some items that were of common national interest to the entire federation included: national defence, currency, weights and measures, postal service, duties of customs on imports and exports, telegraphic communication, Indians and lands reserved for Indians, naturalization and immigration, and inter-colonial railways.<sup>46</sup> The provinces would have control of items that were of local interest such as: direct taxation, education,

---

<sup>41</sup> Russell, *Constitutional Odyssey*, 23.

<sup>42</sup> Cited in Doughty, “Notes on the Quebec Conference, 1864”, 28.

<sup>43</sup> Report: Of resolutions adopted at a Conference of Delegates from the Provinces of Canada, Nova Scotia and New Brunswick, and the Colonies of Newfoundland and Prince Edward Island, held at the City of Quebec, 10<sup>th</sup> October, 1864, as the Basis of a proposed Confederation of those Provinces and Colonies, in *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope (Toronto: The Carswell Co. Ltd, 1895), 39.

<sup>44</sup> Cited in Moore, *1867: How the Fathers Made a Deal*, 120.

<sup>45</sup> See Russell, *Constitutional Odyssey*, 24.

<sup>46</sup> Report: Of resolutions adopted at a Conference of Delegates from the Provinces of Canada, Nova Scotia and New Brunswick, and the Colonies of Newfoundland and Prince Edward Island, held at the City of Quebec, 10<sup>th</sup> October, 1864, as the Basis of a proposed Confederation of those Provinces and Colonies, in *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope (Toronto: The Carswell Co. Ltd, 1895), 43-45.

penitentiaries, hospitals, municipalities, social welfare, and other matters of a merely local or private nature.<sup>47</sup>

### Structure of the Bicameral National Parliament

The progress of the Conference slowed when the discussion moved to the structure of the national parliament. The national parliament would consist of a bicameral legislature – this resolution was easily agreed upon. John A. Macdonald said, “As regards to the constitution of our legislature...with the Queen as our Sovereign, we should have an upper and a lower house.”<sup>48</sup> The delegates had some rather strong contrasting views on representation in the lower house. A number of Maritime delegates were uncomfortable with representation by population in the lower chamber because they would be overwhelmed by both the populations of Canada East and more so by Canada West.<sup>49</sup> The Maritime delegates feared there would always be a focus on the Canadas, as Canada West and Canada East already had more population in the British North American colonies than the Maritimes. George Brown, a delegate from Canada West, who was a staunch supporter of representation by population, would not agree to enter a federal union without at least one chamber in the national parliament consisting of representation by population.<sup>50</sup>

### The Structure of the Senate

Delegates from Canada East were also not overly enthusiastic about representation by population. They needed some reassurances that they would not be inundated by representatives from Canada West in the national parliament. The proposal for an upper chamber, the new Senate, calmed the fears of the delegates from Canada East of not having a strong voice in the national parliament as there would be much greater individual equality among the new provinces of Canada. George Brown believed that compromise was in order since he and the other

---

<sup>47</sup> Ibid., 46-48.

<sup>48</sup> Discussions in Conference of the Delegates from the Provinces of British North America, Conference Chamber, Parliament House, Quebec, 11 October 1864, in *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope (Toronto: The Carswell Co. Ltd, 1895), 57.

<sup>49</sup> Cited in Moore, *1867: How the Fathers Made a Deal*, 102.

<sup>50</sup> See MacKay, *The Unreformed Senate of Canada* (1926), 37.

delegates from Canada West received what they wanted in the lower house. Brown stated, "Our (Canada East) friends have agreed to give us representation by population in the Lower House, on the express condition that they shall have equality in the Upper House. On no other condition could we have advanced a step."<sup>51</sup> As J.L. Finlay and D.N. Sprague noted, the Senate would be based on set equality rather than population, this pacified both Canada East and the Maritimers, "...who feared representation by population because it seemed too populist or prejudicial to the small provinces."<sup>52</sup> The Senate based on regional equality would assure the smaller provinces of greater influence since no proposed bill in the House of Commons could receive Royal Assent, without the explicit confirmation of the Senate.<sup>53</sup> The delegates had agreed representation by population in the lower house and equality in the upper house. The difficulties were in the details, while the representation by population was rather straight forward, the specifics about the Senate were not.

### Regional Equality and Seat Allocation in the Senate

At the Quebec Conference, out of a total of fourteen days spent discussing Confederation, six days were spent discussing the details of the Senate.<sup>54</sup> From the beginning the delegates were in constant disagreement surrounding the details of the upper house. The discussion of the Senate started when John A. Macdonald introduced the resolution that the Senate should be based on regional equality rather than provincial equality.<sup>55</sup> The three regions that were to be equally represented were Canada West, Canada East and the Maritimes. The Maritimers felt that the regional allocation was unfavourable to them as the two Canadas were being over represented in the Senate. There were two competing arrangements for equality in the Senate, one was based on provincial equality, and the other was based on regional equality.

---

<sup>51</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (8 February 1865), p. 88 (Mr. Brown, Member of Provincial Parliament).

<sup>52</sup> J.L. Finlay and D.N. Sprague, *The Structure of Canadian History* (Scarborough ON: Prentice-Hall Canada, 2000), 197.

<sup>53</sup> Ibid.

<sup>54</sup> See Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 37.

<sup>55</sup> See MacKay, *The Unreformed Senate of Canada* (1926), 99.

The Maritimers wanted and argued for more influence in the Senate, and were understandably opposed to regional equality.<sup>56</sup> The Senate was the last area where the Maritimers could justifiably argue for more influence, because they had a weak argument in the lower house based on population. The resolution for regional equality was strenuously opposed by the Maritime Provinces, primarily Prince Edward Island.<sup>57</sup> Why should Canada East (Quebec) and Canada West (Ontario) each be classified as their own region, while the Maritime colonies are attached together? Surely the differences of Canada East and Canada West were just as different as those of New Brunswick versus Nova Scotia. The only safeguard that Maritime Provinces would possess was in the Senate.<sup>58</sup> The delegates from Prince Edward Island demanded provincial equality in the Senate. From the beginning of the Charlottetown Conference, the delegates from Prince Edward Island were rather indifferent to the idea of Maritime Union, let alone British North American union, now in the middle of the Quebec Conference they were growingly displeased and undesirable to the idea. Regarding the new Canadian Parliament, the delegates from Prince Edward Island were uncomfortable with representation by population in the lower house – although they accepted it, but they objected to and held opposition towards regional equality in the new upper house. They were opposed to regional equality because similar to the lower house, Prince Edward Island would have an insignificant voice in the upper chamber. As a result of the opposition towards regional equality, the delegates from Prince Edward Island introduced a proposal for provincial equality in the Senate during the Quebec Conference, which was not in fact entertained.<sup>59</sup> The other delegates agreed with John A. Macdonald and felt that regional equality was better than provincial equality.

The proponents of regional equality argued that the “...general regional needs and interests rather than particular states’ rights should be represented in the British North American upper house.”<sup>60</sup> One of the fears of provincial equality was that senators would then demand attention to very specific, local issues in the Senate

---

<sup>56</sup> See Moore, *1867: How the Fathers Made a Deal*, 104.

<sup>57</sup> “Friday, 14 October 1864. Hewitt Bernard’s Minutes of the Quebec Conference, 10-29 October, 1864,” found in *Documents on the Confederation of British North America*, ed. G.P. Browne (Toronto: McClelland and Stewart Limited, 1969), 136.

<sup>58</sup> Ibid.

<sup>59</sup> MacKay, *The Unreformed Senate of Canada* (1926), 38.

<sup>60</sup> Creighton, *The Road to Confederation – The Emergence of Canada: 1863-1867*, 117.

that were only related to their province as opposed to general regional and national needs. It would be best, that if specific local provincial issues arose, they be best handled by the provincial legislatures as it was a local issue. This was set out in the Seventy-Two Resolutions and more so in the *British North America Act* in Section 92 (16) as the provincial legislatures are within the exclusive right to handle matters of a local nature of the province.<sup>61</sup> It would infringe the rights of the provinces in the federation if the national parliament consistently handled local issues. If such local matters were brought into the national Parliament they should be introduced by the members of the lower house, chosen to represent local constituencies. The Canadian upper house was intended to represent, articulate and express larger regional concerns; this is why John A. Macdonald advocated regional equality rather than provincial equality in the Senate. Regional equality would assign each region twenty-four senators. Twenty-four senators would each go to Canada West and Canada East, and the Maritime Provinces would also receive twenty-four senators where Nova Scotia and New Brunswick would each receive ten senators and Prince Edward Island would receive four.

The delegates from Prince Edward Island alone disagreed with the arrangement of senators.<sup>62</sup> They considered that four senators would be insufficient in the upper house to advocate Prince Edward Island's views in the new national parliament, particularly when compared to the twenty-four senators allocated to Canada West. Although not unanimously agreed, the majority of the delegates voted in favour of subdividing the Senate on regional equality, rather than provincial equality, on the grounds that the Senate was not intended to be a chamber to represent specific provincial interests.

### *Fixed Number Equals Greater Independence.*

Once the resolution had been passed on regional equality, the delegates then debated over the related issue of having a fixed number of seats in the Senate. The intention for the Senate, by having a fixed constitutionally rigid number of seats,

---

<sup>61</sup> Department of Justice Canada. "*British North America Act, 1867: Distribution of Legislative Powers.*" Government of Canada. <http://www.justice.gc.ca/eng/pi/const/lawreg-loireg/p1t13.html> (Date created unknown, date last accessed on 31 August 2011).

<sup>62</sup> MacKay, *The Unreformed Senate of Canada* (1926), 39.

would be a heightened level of independence. George Brown stated, “The desire was to render the Upper House a thoroughly independent body – one that would be in the best position to canvass dispassionately the measures of this House, and stand up for the public interests in opposition to hasty or partisan legislation.”<sup>63</sup> If the Senate did not have a rigid number of seats and the numbers were rather fluid and could be increased, the government of the day could simply appoint new partisan senators that would vote favourably towards government measures, hence reducing the independence of the upper house. The Senate would no longer have a heightened level of being an independent chamber legislating objectively on proposed legislation; it would simply be a rubber stamp that agreed with the lower house. On having a rigid number of seats in the Senate, John A. Macdonald stated, “No Ministry, can in the future do what they have done in Canada before – they cannot with the view of carrying any measure, or strengthening the party, attempt to overrule the independent opinion of the Upper House by filling it with a number of its partisans and political supporters....The fact of the government being prevented from exceeding a limited number will preserve the independence of the Upper House, and make it, in reality, a separate and distinct chamber, having a legitimate and controlling influence in the legislation of the country.”<sup>64</sup> This protection for the upper chamber being an independent body was partially established when delegates approved the proposal for a fixed number of seats in the Senate.

### Appointment Equals Greater Independence

There were two different and competing arguments for the selection of senators; the first being elected, and the second being appointed. A number of delegates believed democracy and accountability were vital in the new parliament, and argued in favour of electing senators, either by the people or by the provincial legislatures. After an analysis of the arguments put forward at the Quebec Conference, it was understandable why the delegates eventually agreed that senators should not be elected but rather appointed by the governor general of Canada on the

---

<sup>63</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (8 February 1865), p. 90 (Mr. Brown, Member of Provincial Parliament).

<sup>64</sup> MacKay, *The Unreformed Senate of Canada* (1926), 41.

advice of the prime minister. Not all the delegates were in favour of appointments, Christopher Dunking from Canada East ridiculed and called it, "...just the worst body that could be contrived – ridiculously the worst."<sup>65</sup> He joked that the only defence it had was that the appointees would be older men, where death, "...would provide a strange kind of constitutional check when nothing else did."<sup>66</sup> Some delegates wanted the senators to be selected directly by the provincial legislatures.<sup>67</sup> This idea was not greatly entertained at the Conference.

The primary problem some delegates had with appointed senators was a lack of accountable representation. How could a senator selected by the governor general on the advice of the prime minister be a special representative and a staunch defender of the province they were from?<sup>68</sup> Even George Brown, at one point argued, "I press on the Conference that each province should be allowed to take its own mode of selection."<sup>69</sup> There were a number of reasons why the delegates at the conference eventually voted in favour of the appointment process by the central government rather than by the provinces or the general electorate. The interest of the nation supersedes the interests of individual provinces in the Senate. One of the reasons why the delegates agreed to the appointive process by the central government was, "...that sentiments of particularism should not endanger the unity of the new nation..."<sup>70</sup> The Fathers of Confederation and framers of the Constitution, "...called for representation of the regions in a legislative and deliberative institution where (senators) would bring their knowledge of the regions into debates on national issues...in the formal, deliberative, and lawmaking process of the nation."<sup>71</sup> The central government would make the appointment, rather than the local authorities because the Fathers and framers did not intend nor want extreme provincialists placed into the Senate, but rather they wanted national thinking regionalists sitting in

---

<sup>65</sup> Moore, *1867: How the Fathers Made a Deal*, 107.

<sup>66</sup> Ibid.

<sup>67</sup> Russell, *Constitutional Odyssey*, 25.

<sup>68</sup> Creighton, *The Road to Confederation – The Emergence of Canada: 1863-1867*, 87.

<sup>69</sup> Discussions in Conference of the Delegates from the Provinces of British North America, Conference Chamber, Parliament House, Quebec, 19 October 1864, in *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope (Toronto: The Carswell Co. Ltd, 1895), 65.

<sup>70</sup> MacKay, *The Unreformed Senate of Canada* (1967), 50.

<sup>71</sup> Janet Ajzenstat, "Bicameralism and Canada's Founders: The Origins of the Canadian Senate," in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montreal: McGill-Queen's University Press, 2003), 17.

the Senate. This is one reason why the Esquimalt and Nanaimo Railway Bill is selected as a case study as it concerned a very specific local railway between two towns in British Columbia. It does not have strong regional or national significance, and this is a good case study to analyze the senators' responses to a local provincial issue being dealt with in the national parliament.

The Fathers of Confederation also considered that an appointed Senate could also be more independent since there would be no elections. The senators could evaluate legislation on what would be right for Canada, which at times would not necessarily be the most popular outcome. Having an appointed Senate would lead to a more independent upper chamber that could act, in the way John A. Macdonald famously conveyed, as a "...sober second thought in legislation."<sup>72</sup> It was intended that since the future senators would not face re-election every few years, they could vote on potentially controversial measures in the Senate for the benefit of Canada as a whole as they would not fear making an unpopular decision nor fear losing their senate seat. This is one additional reason why the Old Age Pension Bill is selected as a case study. This was a bill that was almost universally approved of as providing pensions to the old age population, yet the majority of senators blocked the bill from passage. This begs the question of whether senators might have done so if they had been facing an election soon afterwards. Moreover, given that they blocked the bill so surely, we need to consider whether the senators had a crucial issue with the proposed legislation, or whether there were also extenuating circumstances behind the blockage.

### The House of Commons is Supreme

One explanation as to why the delegates agreed on an appointed Senate was that they felt a bicameral legislature should only have one powerful chamber, not two competing chambers. The delegates agreed that the government would be held responsible to the House of Commons. The delegates' commitment and faith in responsible government explained why they settled on an appointed Senate.<sup>73</sup> If the delegates created an elected Senate, it would have created a rival in parliament and

---

<sup>72</sup> P.B. Waite, *The Confederation Debates in the Province of Canada – 1865* (Toronto: McClelland and Stewart, 1969), 49.

<sup>73</sup> *Ibid.*, 112.



would have challenged the responsible government principle established many years prior to the Confederation Conferences. The delegates viewed the lower house, the House of Commons, as the more powerful chamber. As MacKay notes, “The Senate was intended to hold a subordinate place to the House of Commons.”<sup>74</sup> An elected Senate would challenge the House of Commons because there would be “...two Houses of exactly the same character which were both likely to consider themselves the interpreters of the popular will, and that such a condition would inevitably lead to conflicts between the Houses.”<sup>75</sup> These conflicts and challenges were a problem the Province of Canada faced during pre-Confederation and was trying to overcome with the creation of a new parliament. By creating a Senate that was appointed, and a House of Commons that was elected, the latter would be supreme because the more representative chamber would have the popular mandate needed to govern in a democracy.<sup>76</sup> This became evident in each case study as the Senate was criticized by newspapers and the public for blocking a bill that had been passed by a lower but publicly elected legislative chamber.

John A. Macdonald was one of the delegates who adamantly opposed an elected Senate. If there was an elected Senate and a deadlock between the two chambers happened, Macdonald feared the worst, because the elected Senate could claim to have supremacy over the House of Commons. As John A Macdonald argued, in the case of deadlock the elected Senate could claim:

*“We as much represent the feelings of the people as you do, and even more so; we are not elected from small localities and for a short period; you as a body were elected at a particular time, when the public mind was running in a particular channel; you were returned to Parliament, not so much representing the general views of the country, on general questions, as upon the particular subjects which happened to engage the minds of the people when they went to the polls. We have as much right, or a better right, than you to be considered as representing the deliberate will of the people on general questions, and therefore we will not give way.”*<sup>77</sup>

Alexander Mackenzie from Canada West, similarly echoed John A. Macdonald’s claim. Mackenzie said, “It is evident that two chambers which have originated in precisely the same way, will claim to exercise that same rights and privileges, and to

---

<sup>74</sup> MacKay, *The Unreformed Senate of Canada* (1926), 51.

<sup>75</sup> Ibid., 42-43.

<sup>76</sup> Moore, *1867: How the Fathers Made a Deal*, 204.

<sup>77</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (6 February 1865), p. 37 (Mr. Macdonald, Member of Provincial Parliament).

discharge the same function....”<sup>78</sup> The proposals for the appointment of senators by the governor general on the advice of the prime minister was approved by the majority of delegates at the Quebec Conference.

### Appointment For Life

After the delegates agreed that the senators should be appointed by the central government and not elected, the next detail to be sorted was the tenure of each senator. How long would they serve? With the exception of the delegates who wanted an elected Senate, it was agreed with little resistance that the tenure of a senator should be for life. The appointment for life was intended to grant and encourage a more honest freedom of speech and legislative action.<sup>79</sup> The idea was that the senators would not fear political party ramifications if they did not toe the party line in the Senate, since they were there for life, they could vote as they pleased on what would be best for Canada. The problem with this, as will be seen with each blocked bill, when a partisan individual gets appointed into the Senate, they usually remain a partisan individual in the Senate for life which naturally created large partisan voting blocks of senators. Partisan block voting proved to be a significant issue with the Naval Aid Bill and the Old Age Pension Bill.

### Chief Function of the Senate

After the delegates established that the Senate would be based on regional equality, with a fixed number of seats, and senators appointed by the Crown – for life, delegates at the Quebec Conference considered the chief functions of the Senate. They determined that, while the Senate’s primary function, as in most second chambers, was to legislate, its secondary function was to represent the regions. As Dawson and Dawson have argued, “The chief function of the Senate is legislation, that is, the consideration and passage of bills which it either originates or receives

---

<sup>78</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (23 February 1865), p. 426 (Mr. Mackenzie, Member of Provincial Parliament).

<sup>79</sup> See Lieut.-Governor Arthur Hamilton Gordon of New Brunswick to Edward Cardwell, Colonial Secretary, 26 September 1864, in *Documents on the Confederation of British North America*, 46.

from the House of Commons.”<sup>80</sup> The intended heightened level of independence that the delegates tried to establish for the Senate reflected how they viewed it as a legislative chamber that should be kept away from all the drama and cheap politics in the House of Commons in order that the Senate could review legislation placed before it. Canada’s upper chamber was to be “the workshop” of Parliament and the House of Commons was to be “the theatre”, where the drama happened.<sup>81</sup> The intention George Brown hoped for, “...was to render the upper house a thoroughly independent body – one that would be in the best position to canvass dispassionately the measures of (the lower house), and stand up for the public interests in opposition to hasty or partisan legislation.”<sup>82</sup> This is important as there are occasions when the government of the day introduces hasty legislation, as in the case of the Esquimalt and Nanaimo Railway Bill, the Naval Aid Bill, and the Old Age Pension Bill. A delegate from Canada East, Joseph Édouard Cauchon, seconded George Brown by stating, “...we ought to place in the Constitution a counterpoise to prevent...and to moderate the precipitancy of any government which might be disposed to move too fast and go too far, - I mean a legislative body able to protect the people against itself and against the encroachments of power.”<sup>83</sup> In order to ensure that the Senate’s great responsibility as a chamber of sober second thought, that would stand up for the public interest and prevent any government moving too fast, or too far, made it necessary to ensure that the Senate would have the power of a legislative veto.

The power of a legislative veto in the Senate was agreed and granted by the delegates at the Quebec Conference. Without the power of a veto many delegates feared the worst. George-Étienne Cartier stated, “...the weak point in democratic institutions is the leaving of all power in the hands of the popular element. The history of the past proves that this is an evil. In order that institutions may be stable and work harmoniously, there must be a power of resistance to oppose to [sic] the

---

<sup>80</sup> R. MacGregor Dawson and W. F. Dawson, *Democratic Government in Canada* (Toronto: University of Toronto Press, 1971), 67.

<sup>81</sup> See Library and Archives Canada, Wishart Robertson Fonds, R9206 #3, "Constitution of the Senate" series, 3-10, 1944, *The Canadian Senate – Its Purpose and Function*, page 15, Senator Wishart Robertson’s address to the Lion’s Club of St. Catharines, Ontario, 24 October 1944.

<sup>82</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (8 February 1865), p. 90 (Mr. Brown, Member of Provincial Parliament).

<sup>83</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (2 March 1865), p. 572 (Mr. Cauchon, Member of Provincial Parliament).

democratic element.”<sup>84</sup> The English political theorist, John Stuart Mill would have been pleased with the Fathers of Confederation and the framers of the Canadian Constitution as Mill wrote in his publication entitled, *Considerations on Representative Government*, “An assembly which does not rest on the basis of some great power in the country, is ineffectual against one which does.”<sup>85</sup> The Senate needed the power of resistance – the power of a veto – to act as a proficient second thought chamber. With the power of a legislative veto the new Senate would have the ability, “...to guard (Canadian) interests, protecting them against hasty and ill-considered legislation, and preventing improper and extravagant appropriations of the public funds.”<sup>86</sup> The intention that the Senate provide a protection against an extravagant appropriation of public funds was an additional reason why the Naval Aid Bill was selected, as it proposed to spend thirty-five million dollars in 1913 on three battleships for the British Royal Navy.

The Fathers of Confederation granted the Senate a veto. The intended role of the Senate was to use its power when it considered it necessary. If it did not, there would be no use of the Canadian Senate. John A. Macdonald, during the Confederation debates, summed up what he and others intended and expected from the Senate. Macdonald said, “There would be no use of an Upper House if it did not exercise, when it thought proper, the right of opposing or amending or postponing the legislation of the Lower House. It would be no value whatever were it a mere chamber for registering the decrees of the Lower House. It must be an independent House, having a free action of its own, for it is only valuable as being a regulating body, calmly considering the legislation initiated by the popular branch, and preventing any hasty or ill-considered legislation which may come from that body.”<sup>87</sup> Alexander Campbell from Canada West echoed John A. Macdonald’s intentions for the Senate when he stated that the Canadian Senate should be “...conservative, calm,

---

<sup>84</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (27 February 1865), p. 571 (Mr. Cartier, Member of Provincial Parliament).

<sup>85</sup> John Stuart Mill, *Considerations on Representative Government* (London: Parker, Son, and Bourn, 1861), 233.

<sup>86</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (17 February 1865), p. 288 (James G. Curry, Member of Provincial Parliament, quoting David L. Macpherson, Member of Provincial Legislative Council).

<sup>87</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (6 February 1865), p. 36 (Mr. Macdonald, Member of Provincial Parliament).

considerate and watchful, to prevent the enactments of measures which, in its deliberate judgement, were not calculated to advance the common weal.”<sup>88</sup> The intentions of the Fathers of Confederation for the Senate were that it legislate with independence, at a distance from outbursts of current excitement, not to be swayed but to evaluate proposed legislation for its true merits, for the benefit of Canada, even if it went against what certain regions, provinces, governments or even what other countries wanted. This is an additional reason why the three specific case studies were selected. The Esquimalt and Nanaimo Railway Bill was a very provincial piece of legislation and there was strong opinion for its support within British Columbia. The Naval Aid Bill generated massive public interest and the British government wanted it passed. Finally, the Old Age Pension Bill was publicly supported, yet the Senate still blocked the bill.

### *Protection of Rights*

The Senate is based on regional representation and senators come from specific provinces or territories, but the Fathers of Confederation did not intend on having the Senate act as the primary protector of provincial rights. This resulted in uncertainty because although the Fathers of Confederation set up an upper chamber where each senator was to represent their home province, the Senate was divided also into equal regions where the senators are to advocate and articulate interests of the regions they are from. Representation of the province, protection of the region, this is fine for Ontario and Quebec where they each are classified as a single region. With respect to the other regions such as the western region (British Columbia, Alberta, Saskatchewan, Manitoba) – there is not the same loyalty present with a senator from either Saskatchewan or Manitoba handling a “regional” issue that would have a large or exclusive effect on British Columbia. This was seen with the Esquimalt and Nanaimo Railway Bill. The loyalty to stand up for and with British Columbia by a Manitoba senator would not be to the same degree as with senators dealing with “regional” issues from Ontario or Quebec.

---

<sup>88</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (6 February 1865), p. 24 (Mr. Campbell, Member of Provincial Parliament).

This returns to the main question concerning the Senate in its first sixty years. The Senate in Parliament was created to articulate and express Canada's regional and national concerns, and to scrutinize proposed legislation that came before it carefully and independently. The selection of the blocked Esquimalt and Nanaimo Railway Bill, Naval Aid Bill, and the Old Age Pension Bill, all provided excellent case studies to analyze the Senate on its foundational setup by the Fathers of Confederation. Two of the bills had a strong inclination of the federal government infringing on the rights of the provinces. The senators did not allow for such infringement to pass through the national Parliament. The naval bill additionally dealt with nationally retrogressive legislation, which the senators blocked from passage after their evaluation.

### Seventy-Two Resolutions

The delegates from the Province of Canada, New Brunswick, Nova Scotia, and Prince Edward Island at the Quebec Conference which took place between 10 and 27 October 1864, produced seventy-two resolutions. The Seventy-Two Resolutions ultimately framed the structure of governance and union in the Canadian federation.<sup>89</sup> They were the backbone of the *British North America Act* of 1867. As Moore argues, the document that the Fathers of Canadian Confederation produced, "...was a strikingly utilitarian document. There was no poetry in the Quebec resolutions. The colonists had addressed the philosophical questions of government in the responsible-government struggles two decades earlier. They treated their constitution as a machine for running government mechanics."<sup>90</sup>

### Problems

Nothing is perfect and some problems developed with the Senate after Confederation which was not entirely accounted for nor appreciated during the Confederation Conferences. The first problem, as we will see in the discussion of the three proposed bills, lay with the appointment process and partisan appointments as partisan appointments lead to partisan block voting. This was voting with one's respective political party in the Senate, not necessarily having an independent

---

<sup>89</sup> See Finlay and Sprague, *The Structure of Canadian History*, 196.

<sup>90</sup> Moore, *1867: How the Fathers Made a Deal*, 129.

mindset nor voting on proposed legislation with for what was in the best interests of the nation. During the Confederation Conferences, political parties were still in their infancy stages in Canada and party discipline in the legislatures was still rather loose.<sup>91</sup> The Fathers of Confederation intended that the Senate would be less partisan than the elected House of Commons with appointed life terms where no one would challenge them for their Senate seat.

The second related problem that most of the Fathers of Confederation did not foresee was by having senators appointed for life, there is no real check upon them after they get appointed. David Reesor from Canada East was not pleased with the appointment process and foresaw future difficulties. “But inasmuch as you appoint these members for life,” Reesor said, “you have no check over them, nor are they so likely to check legislation of an immature and ill-considered character. While the ministry of the day which appoints them remains in power, it will expect and receive a cordial support from them; but let it be defeated, and a ministry, formed out of the opposite party obtaining office, there will certainly be difficulty – there will be a tendency to dead-locks between the two braches of the legislature....”<sup>92</sup> Reesor’s cautionary statement that foresaw the difficulties of partisan appointments, actually became reality with respect to all three blocked bills. There is no scheduled check upon them so the senators could vote as they wished and this often resulted to exclusively voting with one’s respective political party on a constant basis. A senator can say to themselves, “I owe no loyalty to my province or region I represent, the prime minister put me in here, my loyalty belongs to the leader and the party because it is not like the province can get rid of me if they do not appreciate how I legislate.”

### Approval of Union in the British North American colonies

When the Quebec Conference ended on 27 October 1864, delegates from the colonies of the Province of Canada, Nova Scotia, New Brunswick and Prince Edward Island, went back to their respected legislatures to receive approval of the formalized Seventy-Two Resolutions established at the Conference, and approve the

---

<sup>91</sup> See Russell, *Constitutional Odyssey*, 16.

<sup>92</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (20 February 1865), p. 331 (Mr. Reesor, Member of Provincial Parliament).

act of uniting with the other British North American colonies. The Province of Canada, Nova Scotia, and New Brunswick all approved the scheme, but Prince Edward Island did not approve. Prince Edward Island did not find the scheme advantageous and did not see the need to join the others.

### The London Conference – December 1866 – March 1867

The London Conference was held in order to transform the Seventy-Two Resolutions into a formal legislative act that could be introduced as a bill into the British Parliament. There were no major transformations regarding the resolutions, the delegates urged the individuals at the Colonial Office that the delegates agreed upon the Seventy-Two Resolutions at Quebec, and their union was based on those. Any major alterations might have upset the union plan. There was only one change regarding the new Canadian upper chamber. The Colonial Office required some provision within the *British North America Act* to break deadlocks between the House of Commons and the Senate. The delegates in London included an amendment to provide for the appointment of extra senators that would be appointed in equal numbers from each of the regions thus maintaining regional equality and to break any political deadlocks within the Canadian Parliament.<sup>93</sup> There will always be a situation that arises where the lower house and the upper house are at odds with each other. This provision was included because the British recognized from their own experience and from what they witnessed in the Province of Canada, that disagreements naturally occur and it is not a matter of if – but of when. After that was placed in the proposed Act, the Act passed through the British Parliament with no problems, it received Royal Assent from Queen Victoria, and on 1 July 1867 came in force. The specific sections that apply to the Senate in the *British North America Act* are sections twenty-one through thirty-six.

### The Intentions

The Senate was intended to be a legislative chamber which considers legislation either introduced from the Senate itself or from the House of Commons. Secondly, the Senate is a legislative chamber based on regional representation. The

---

<sup>93</sup> See Russell, *Constitutional Odyssey*, 31.



Senate was intended to represent, articulate and conduct larger regional and national issues, not specifically provincial issues for the members of parliament are to articulate those or the province handles them. There would be a fixed number of senators as to preserve regional equality and that no one specific region would dominate the Senate by having a greater number than everyone else.

The Senate was created to have membership by appointment only. Since there would be no public elections, it was intended that the senators would have the ability to evaluate and legislate on proposed measures which would benefit Canada, which at times happens to go against popular opinion. The Fathers of Confederation and the framers of the Constitution did not want an elected Senate, as an elected Senate would have an elected mandate from the people and this might have caused a number of deadlock situations because an elected Senate could also claim to be the interpreters of popular will. The Fathers of Confederation wanted to get away from the political deadlocks they were experiencing before Confederation. By having an appointed chamber, it created an upper chamber that was subordinate to the House of Commons and less likely to challenge the lower chamber repeatedly.

Although the Senate was subordinate to the House of Commons, from time to time the Senate might block legislation from the popular chamber. The Senate was granted legislative veto powers because the Fathers of Confederation did not want to create a powerless chamber. From time to time the Senate might be required to remind members of the House of Commons that they belonged to a bicameral parliament. When considered appropriate, and with justified reasoning, the senators were expected to stand up against the House of Commons and block legislation which they had evaluated and concluded was not in the best interests of Canada. This could be legislation that was either partisan, passed through the House of Commons too hastily – on which the government was trying to move too fast and go too far, or any legislation that was unjustifiably extravagant in appropriations of public funds. As John A. Macdonald said the Senate was intended to be a place of sober second thought. There would not be any point in having a second chamber if it did not exercise this duty.

### **Chapter Three: The Esquimalt and Nanaimo Railway Bill**

## **Introduction**

The principal task intended for the Senate by the Fathers of Confederation and the framers of the Constitution was the consideration and passage of proposed legislation. Confederation was less than ten years old and many of the Fathers of Confederation still sat in Parliament and the intentions for the Senate were still fresh in the minds of the parliamentarians. By 1875 there was a large Conservative majority in the Senate while there was a Liberal majority in the House of Commons, this was the first time in Canadian parliamentary history when opposing political parties held different majorities in the two national legislative chambers. The Esquimalt and Nanaimo Railway Bill was the first major confrontation between the House of Commons and the Senate, as it was the first time since 1867 that a considerably important government bill was blocked by the Senate from receiving Royal Assent. The Senate's debate over this legislation provided a key opportunity to assess the extent to which this new parliamentary institution was functioning in its early years. After careful consideration the Senate blocked the Esquimalt and Nanaimo Railway Bill, as it was the result of British influence in Canadian affairs, extravagant and unjustifiable in the appropriations of public funds, and potentially unconstitutional. This chapter argues that the Senate's blockage of the Esquimalt and Nanaimo Railway Bill was in accordance with the founding principles and intentions set out by the Fathers of Confederation, but it was evident that some political partisan voting occurred in the vote outcome.

## **The New Province of British Columbia**

After Confederation, Canada was expanding westward from the province of Ontario and after the inclusion of Manitoba in 1870, the British colony of British Columbia showed interest in joining Canada. Prime Minister John A. Macdonald welcomed Canadian westward expansion with the inclusion of the new province of British Columbia into the Canadian federation in 1871, after the two respective parties agreed upon important Terms of Union. Of the numerous Terms of Union, the most relevant is Clause 11 as it required the federal government to commence within two years (by 1873) the construction of a railway from the pacific coast to the existing railway system in central Canada, and to complete the railway within ten

years (by 1881).<sup>1</sup> Not only was the trans-national railway a physical link across Canada, it was also a symbolic national bond from sea-to-sea. Work on the railway began in 1871 with the initiation of land surveys that the railway route would travel throughout Western Canada. However, Clause 11 proved rather ambitious in scope and detrimental to the relationship between the federal government and the new province.

Map 3.1: Location of British Columbia within Canada in 1871<sup>2</sup>



### Political Change in Ottawa

During this time in Ottawa there was a power shift where Macdonald and his Conservative ministry resigned because it was found that they had accepted bribes

---

<sup>1</sup> See W.P.M. Kennedy, *Statutes, Treaties and Documents of the Canadian Constitution 1713-1929* (Toronto: Oxford University Press, 1930), 660.

<sup>2</sup> Please note map has been altered from original to complement thesis. Wikipedia. "Map of Canada in 1871." [http://en.wikipedia.org/wiki/File:Canada\\_provinces\\_1871-1873.png](http://en.wikipedia.org/wiki/File:Canada_provinces_1871-1873.png) (Date created 13 February 2006, date revised 14 July 2009, date last accessed on 31 August 2011).

with contracts given out to build the trans-national railway.<sup>3</sup> The Conservatives resigned in the autumn of 1873 and this event was known as the Pacific Scandal.<sup>4</sup> This resignation resulted in a power shift in Ottawa. The Liberals took control of the government under the leadership of Alexander Mackenzie on 7 November 1873.<sup>5</sup> The Senate also experienced a power shift. In 1867 the Senate had political equality with equal representation of the Liberals and Conservatives balancing each other out. However, by 1873 the Senate's balance of power laid in the hands of the Conservatives as numerous Senate appointments had been made during the previous six years of Conservative rule. It is clear that within five years of Confederation the convention of political party nomination for the Senate was well established and, as a result, the political independence of the Senate was being destroyed.<sup>6</sup>

The Senate was at capacity and therefore there were no vacant seats for Liberals to fill in order to achieve a balance of power. The Liberals were in the minority in the Senate and Prime Minister Mackenzie was rather uncomfortable with the situation so he appealed to the Governor General of Canada. On 22 December 1873, Alexander Mackenzie recommended that six additional senators be added to the Senate in accordance with Section 26 of the *British North America Act* which stipulates that additional senators may be appointed beyond that of the normal amount allocated to the regions.<sup>7</sup> The governor general of Canada, Lord Dufferin, wrote to the colonial secretary, Lord Kimberley, on whether such appointments should take place. Lord Kimberley wrote back to Lord Dufferin stating:

*"You will readily understand that Her Majesty could not be advised to take the responsibility of interfering with the Constitution of the Senate except upon an occasion when it had been made apparent that a difference had arisen between the two Houses of so serious and permanent a character that the Government could not be carried on without Her intervention, and when it could be shown that the limited creation of Senators allowed by the Act would apply an adequate remedy. (...) It follows from what I have said that I*

---

<sup>3</sup> See Barbara J. Messamore, "The Line Over Which He Must Not Pass: Defining the Office of the Governor General, 1878." *The Canadian Historical Review* 86, 3 (2005): 465.

<sup>4</sup> Ibid., 466.

<sup>5</sup> See F. W. Howay, *British Columbia: The Making of a Province* (Toronto: The Ryerson Press, 1929), 194-195.

<sup>6</sup> See Robert MacGregor Dawson. *The Principle of Official Independence* (Toronto: S.B. Gundy, 1922), 243.

<sup>7</sup> Lord Kimberley acknowledges Prime Minister Alexander Mackenzie's recommendation in his own despatch to Lord Dufferin. Library and Archives Canada, Alexander Mackenzie Fonds, R5744-1-8-E, Reel M-197 "Proposed Addition to the Senate," Letter from Lord Kimberley to the Governor General Lord Dufferin, 18 February 1874, pages 311-312. (Secret Despatch)

*am not prepared to advise Her Majesty to direct the proposed addition to the Senate.”*<sup>8</sup>

No deadlock had developed between the House of Commons and the Senate, yet Mackenzie tried to get more Liberal senators in the Senate potentially foreseeing challenges with the upper house in the future.

### British Columbia was Still Waiting...

Meanwhile in British Columbia, progress on the trans-national railway was not advancing as most would have liked. By 1873, the physical construction of the railway was nowhere in sight. The battle against Western Canadian topography had not yet been won.<sup>9</sup> The surveying and construction caused massive delays. Politicians in British Columbia became angry and irritated by the construction delays particularly as the federal government had agreed that British Columbia would be connected to the other provinces within ten years. For British Columbia, the trans-national railway across Canada was the “...most important clause of the Terms of Union.”<sup>10</sup> Although the federal government knew of the railway’s importance, it wanted to build along the most sensible and negotiable route to the pacific coast. From the federal government’s perspective, this demanded prudence and careful planning if it was hasty and impulsive on the route and construction, it could result in a far greater expenditure of public funds than originally intended.

The Prime Minister realized that construction of the trans-national railway within ten years was far too ambitious. Alexander Mackenzie abandoned John A. Macdonald’s promise of constructing a trans-national railway because “Such a railway was not only ahead of demand...[but also] the project was beyond Canada’s financial capability, damaged since 1873 by the worst economic recession of the century.”<sup>11</sup> It was clear that part of the original Terms of Union, principally Clause 11, could not be kept by the federal government. Mackenzie wanted a relaxation of the original terms with British Columbia.

---

<sup>8</sup> Ibid., 313-316.

<sup>9</sup> See Margaret A. Ormsby, *British Columbia: A History* (Vancouver: Evergreen Press, 1959), 260.

<sup>10</sup> Alexander Begg, *History of British Columbia: From Its Earliest Discovery to the Present Time* (Toronto, McGraw-Hill Ryerson Limited, 1972), 420.

<sup>11</sup> Cited in J.L. Finlay and D.N. Sprague, *The Structure of Canadian History* (Scarborough: Prentice-Hall Canada, 2000), 234.

Alexander Mackenzie sent James D. Edgar, a federal government representative to British Columbia and instructed him "...to negotiate a relaxation of the Terms of Union by offering conditions which were only slightly more favourable than...(the original)...in 1870."<sup>12</sup> Mr. Edgar arrived in British Columbia and the negotiations continued for three months.<sup>13</sup> As time was elapsing Mr. Edgar submitted a memorandum to the British Columbia government stating that Canada would agree to continue working vigorously on the surveys and construction of the trans-national railway, and commence immediately and prosecute vigorously a railway from Esquimalt to Nanaimo on Vancouver Island.<sup>14</sup> The Government of British Columbia did not appreciate the position that the federal government placed upon it. There were already local jealousies between Vancouver Island and the mainland, and with this new deal the mainland would have to continue to wait a few more years for the trans-national railway while Vancouver Island would receive an island railway immediately.<sup>15</sup> The premier of British Columbia, George Walkem, demanded Mr. Edgar's credentials which allowed and authorized him to make such a proposal, and a heated argument ensued which resulted in Mr. Edgar leaving the province on 19 May 1874.<sup>16</sup> British Columbia was angry and irritated at the federal government because they both originally and formally agreed to a trans-national railway within ten years, and the federal government did not uphold its agreement.

British Columbians, I would argue, were not acting greedily in their anger nor in their disappointment about the much delayed trans-national railway. For British Columbians, the trans-national railway symbolized the physical bond between them and the rest of Canada, it physically symbolized Confederation itself.<sup>17</sup> They knew the value of railways, which were vital for pioneering of new settlements within the new province to grow and prosper.<sup>18</sup> With so many delays in the construction and disagreements growing between the province and the federal government, the British government got involved in the dispute.

---

<sup>12</sup> See Ormsby, *British Columbia: A History*, 264-265.

<sup>13</sup> See Howay, *British Columbia: The Making of a Province*, 196-197.

<sup>14</sup> Ibid.

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> See Ormsby, *British Columbia: A History*, 260.

<sup>18</sup> *Daily British Colonist*, "The Esquimalt-Nanaimo Railway," 19 March 1875. (Victoria, British Columbia).

Map 3.2: Location of Esquimalt and Nanaimo on Vancouver Island<sup>19</sup>



### The Carnarvon Terms

One impetus for the Senate's blockage of the Esquimalt and Nanaimo Railway Bill was Britain's involvement within the intra-national dispute between the province of British Columbia and the federal government of Canada.<sup>20</sup> After a number of meetings with British Columbia and the federal government, the new British secretary of state for the colonies (colonial secretary), Lord Carnarvon, acted as an arbitrator between the two and laid out new terms to settle the disagreement

---

<sup>19</sup> Please note map has been altered from original to complement thesis. Train Web. "The Esquimalt and Nanaimo Railway." <http://www.trainweb.org/canadianrailways/articles/EsquimaltAndNanaimoRailway.htm> (Date created 2000, date last accessed on 31 August 2011).

<sup>20</sup> The term 'intra-national' is used throughout, but the more contemporary term used in Canada and within the same context is 'intergovernmental'.



between the province and the federal government.<sup>21</sup> The primary elements of the Carnarvon Terms, laid out in November 1874, included the construction of a railway from Esquimalt to Nanaimo, to be commenced and finished as soon as possible, additionally the surveys of the trans-national railway were to be “...pushed on with the utmost vigour...” and the trans-national railway was to be completed by 31 December 1890.<sup>22</sup> The main difference between the proposal made by Edgar, as federal negotiator, and that contained in the Carnarvon Terms was the latter stipulated a fixed date of completion of the trans-national railway while the former did not.

The Carnarvon Terms were agreed upon with both the provincial and federal governments. British Columbia’s views of the Carnarvon Terms were similar to those of Mr. Edgar. This served to heighten the regional tension between Vancouver Island and the mainland. However, there was no real alternative but to agree to the Carnarvon Terms. If British Columbia did not agree, it would still be in the situation that it had been in before the disagreement between the federal government and the province had escalated. Moreover, it would still be waiting for the trans-national railway surveys to be finished. This would most likely lead to an even longer wait for the completion of the railway. I would argue that by agreeing to terms arbitrated by an external third party the provincial government was acting in a way that was more neutral towards both Vancouver Island and the mainland. This may have seemed preferable compared to agreeing to terms generated by a representative of the federal government. Prime Minister Mackenzie reluctantly agreed with the Carnarvon Terms which included a completion date for the trans-national railway and an additional local railway on Vancouver Island as a good will gesture.<sup>23</sup> However, even though the provincial and federal governments agreed to the Carnarvon Terms, the term regarding the Esquimalt to Nanaimo railway had to be approved by Parliament because it was not one of the original Terms of Union, and the federal government needed parliamentary approval to commence the construction and the work of the

---

<sup>21</sup> See Howay, *British Columbia: The Making of a Province*, 198-199.

<sup>22</sup> Ibid.

<sup>23</sup> See D.G. Creighton, *Canada’s First Century, 1867-1967* (Toronto: Macmillan of Canada, 1970), 35.

railway.<sup>24</sup> By contrast, the other Carnarvon Terms did not require specific Canadian parliamentary approval and Royal Assent.

### **The Esquimalt and Nanaimo Railway Bill in the House of Commons**

As the federal government was required to proceed with utmost vigour, the Esquimalt and Nanaimo Railway Bill was drafted during the early months of 1875. Speed was essential as the federal government had no intention of breaching and violating its agreement to uphold its obligation abided by the Carnarvon Terms.<sup>25</sup> The railway bill formally known as *An Act to provide for the construction of a Railway from Esquimalt to Nanaimo, British Columbia (1875)* was introduced into a strong Liberal led House of Commons on 19 March 1875 by Alexander Mackenzie.<sup>26</sup> If this railway bill passed it would have created a track approximately one hundred and five kilometres in length at the public cost ranging between two to four million dollars.<sup>27</sup> The Commons debate on the railway bill was rather lively with Conservative members and even some prominent Liberal members criticizing and attacking it. Edward Blake was the most prominent member of the Liberal Party who was against the bill from the introduction, for he viewed it as a local railway, and not one that was nationally significant. Mr. Blake said, “The construction of sixty-five miles of railway was a local work which would involve an expenditure of two or two and a half millions of dollars....It was a local work which, it might be assumed, was important to the locality...but a local work.”<sup>28</sup> This local railway was a public works project in which the federal government should not be involved for it was a provincial matter. In defence, Alexander Mackenzie reminded the House of Commons that “...the construction of the railway was absolutely necessary to the welfare of the Confederation and particularly to British Columbia....”<sup>29</sup> It was a

---

<sup>24</sup> See *Daily Free Press*, “Ottawa,” 1 April 1875. (Winnipeg, Manitoba).

<sup>25</sup> See Margaret A. Ormsby, “Prime Minister Mackenzie, The Liberal Party, and the Bargain with British Columbia.” *The Canadian Historical Review* 26, 2 (1945): 163.

<sup>26</sup> Dominion of Canada, *Journals of the House of Commons of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament, 1875, p. 246.

<sup>27</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament, 1875, (6 April 1875), p. 739 (Mr. Aikins, Senator); Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament, 1875, (29 March 1875), p. 956 (Mr. Blake, Member of Parliament).

<sup>28</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (29 March 1875), p. 956 (Mr. Blake, Member of Parliament).

<sup>29</sup> *Daily Colonist*, “The Island Railway,” 9 November 1880. (Victoria: British Columbia).

necessary action needed for the health of the newly formed Confederation which was less than ten years old.

The Opposition in the House of Commons then attacked the specifics of the railway bill. The main issue at hand for the Conservative opposition was the financial cost of the railway. The geographical surveys on Vancouver Island were not complete, estimates were not thorough; Parliament and the Government were not fully appraised of the cost of the railway. There were a number of estimates but no firm final expected cost was known when the bill was introduced. How could this bill be passed or receive parliamentary approval when, as Charles Tupper argued, “It comes before (Parliament) involving an unknown sum to be given to unknown parties.”<sup>30</sup> As a result of the unknown sums of money that would be granted, the Conservatives wanted the railway contracts to be submitted to Parliament thus being aware of how much the Government was spending and to whom the contracts were awarded.

Alexander Mackenzie did not intend to submit these railway contracts to Parliament. As Mackenzie noted, “The Government (does) not propose to submit these contracts for the approval of Parliament....”<sup>31</sup> If his Government submitted the contracts to Parliament, “...they would have to put off construction of the [rail]road for another year, and they had agreed with the Province of British Columbia to commence the construction immediately.”<sup>32</sup> A fellow Liberal member, Aemilius Irving opposed Mackenzie’s process of the lack of parliamentary approval for the awarding of contracts. Irving said, “The point was that the country had been led to expect that such contracts would be submitted to Parliament....All large contracts...should be submitted to Parliament.”<sup>33</sup> He continued, “...the law did not require it, but it was understood to be a part of the present Government when they criticized the late Government for not following it in connection with the Pacific

---

<sup>30</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (29 March 1875), p. 953 (Mr. Tupper, Member of Parliament).

<sup>31</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (19 March 1875), p. 793 (Mr. Mackenzie, Prime Minister).

<sup>32</sup> *Globe*, “Railway From Esquimalt to Nanaimo,” 30 March 1875. (Toronto, Ontario).

<sup>33</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (29 March 1875), p. 950 (Mr. Irving, Member of Parliament).

Railway.”<sup>34</sup> Still Mackenzie refused to include any stipulation that the contracts under this railway bill would be submitted to Parliament.

As Alexander Mackenzie had a substantial loyal Liberal majority in the House of Commons, as a result of the Canadian Federal Election of 1874, the Esquimalt and Nanaimo Railway Bill did not encounter great resistance as it was passed through with ease. The third reading in the House of Commons was on 29 March 1875, the vote was ninety-one in favour to sixty-four opposed.<sup>35</sup> The Esquimalt and Nanaimo Railway Bill passed its first hurdle in the House of Commons. However, it did not receive the same support in the Senate the following week.

### **The Esquimalt and Nanaimo Railway Bill in the Senate**

After passing its third reading in the House of Commons, the Esquimalt and Nanaimo Railway Bill was sent to the Senate where it was introduced by Senator Richard Scott (Liberal – Ontario) on 3 April 1875.<sup>36</sup> Senator Scott stated that this bill was a result of “...the failure to carry out the Terms of Union with British Columbia...”<sup>37</sup> The Government acknowledged it could not keep its agreement regarding the completion of the trans-national railway across Canada within the time frame originally agreed upon. In keeping with the Carnarvon Terms it therefore stipulated that it would continue working diligently on the trans-national railway and, as compensation, build an additional railway on Vancouver Island.

From the moment the bill was introduced in the Senate a number of concerns were voiced about building this railway on Vancouver Island. These included the appearance of British influence upon the bill with the involvement and arbitration of Lord Carnarvon, the incompleteness of the geographical land surveys, the difficult terrain, the significant proposed costs and, finally, the fact that this was a local railway not a national railway.

---

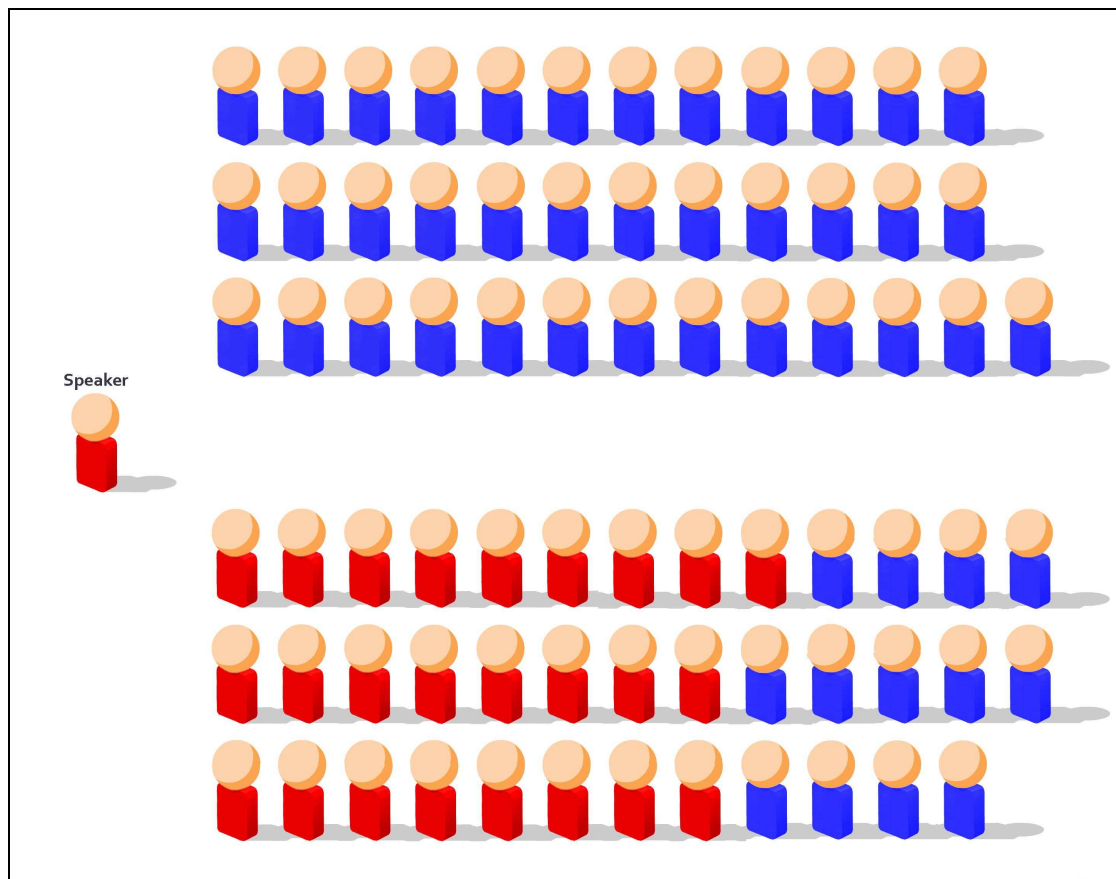
<sup>34</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (29 March 1875), p. 949 (Mr. Irving, Member of Parliament).

<sup>35</sup> Dominion of Canada, *Journals of the House of Commons of the Dominion of Canada*, 1875, p. 299.

<sup>36</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament, 1875, p. 258.

<sup>37</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 738 (Mr. Scott, Senator).

Diagram 3.1 – Political Party Allocation in the Senate in 1875<sup>38</sup>



The Senate in 1875, with seventy-six senators, twenty-six were Liberal senators (red), while there were fifty Conservative senators (blue).

The Senate's concern about British influence on the development of this bill was reflected in comments such as those by Senator William Miller (Conservative - Nova Scotia) who stated that, "The line of railway proposed by the bill...had been recommended by the Imperial Government."<sup>39</sup> Additionally, Senator Scott acknowledged that this bill was "...through the interference of the Imperial Government...to create a state of good feeling in British Columbia."<sup>40</sup> Within the Senate there was a level of discomfort with the high level of British involvement in the dictation of the legislative agenda of Canada with respect to an intra-national

<sup>38</sup> Parliament of Canada. "Senators."

<http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-57a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&PrimeMin> (Date created unknown, date revised 1 March 2010, date last accessed on 31 August 2011).

<sup>39</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 747 (Mr. Miller, Senator).

<sup>40</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 738 (Mr. Scott, Senator).

issue contained within Canada's borders. Not one senator praised Lord Carnarvon and his involvement in undertaking the position of arbitrator between the federal government and British Columbia. Canada was still relatively young, but not an infant, perhaps the Senate was trying to assert some greater independence from Britain immediately after Confederation?

The second aspect was the non-completion of the geographical/topographical land surveys on Vancouver Island between Esquimalt and Nanaimo. The issue at hand was that construction of the railway would not commence until the completion of the surveys. No money would be paid out until the surveys were complete, so no contracts would be finalized. With the completion of the surveys, the Government and Parliament would have a greater understanding of the final cost of negotiating the terrain for the railway through the mountains and hills between the two towns. It was rather perplexing to a number of senators as to the timing of this bill; Senator Robert Dickey (Conservative - Nova Scotia) stated, "In view of the incompleteness of the surveys, the commencement of the railway could possibly be left over till next year, and, if so, why should not the contracts be submitted to Parliament next Session?"<sup>41</sup> He continued that the "...construction could not be commenced till after the line was thoroughly surveyed and located."<sup>42</sup> Why was this bill being rushed through Parliament when there were so many unknowns still waiting to be answered?

The Government pushed the bill through as it promised it would move as fast as it could with respect to both railways after the intervention from Lord Carnarvon. Senator Scott stated, "In consequence of [the] Government having undertaken to lose no time in the construction of this work, it was impossible to complete the surveys and have the contracts prepared at the meeting of Parliament."<sup>43</sup> However, this was not viewed favourably with the majority of senators during the debate. Senator Robert Read (Conservative – Ontario) summarized what other senators had additionally mentioned. "Let the Government make an exhaustive survey of the country...then select the proper place...and go to work with no uncertain sound to

---

<sup>41</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 742 (Mr. Carrall, Senator).

<sup>42</sup> Ibid.

<sup>43</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 738 (Mr. Scott, Senator).

construct a railway...and they shall have my hearty support.”<sup>44</sup> In short, the Senate was challenging the speed with which the bill was being considered in Parliament, particularly when there remained so many unknowns with the fiscal details of the bill.

The third aspect of the bill which the Senate did not view favourably concerned the terrain on which the railway would be laid down. The archival evidence available suggested that the land conditions were indeed poor as the proposed route included steep slopes of rocky hillside which would necessitate heavy and deep rock excavations. In addition, heavy bridging would be involved because of the number of deep valleys which ranged from seventy-five feet deep to over two-hundred feet in depth.<sup>45</sup> Engineer-in-Chief, Sandford Fleming, noted that the “...the work on the line...is far from light...[it] is hilly and rough...deep ravines have to be crossed...much of this...line is tortuous.”<sup>46</sup> The senators knew that such terrain would require more than the usual amount of public funds to build this railway, and there was the very real possibility of cost overspending. Senator Read spoke about how treacherous the land conditions were between Esquimalt and Nanaimo, and he was greatly perplexed as to why a railway was even thought about being laid down between these towns. Senator Read noted that the conditions were “...enough to preclude its construction....”<sup>47</sup> He even posed the question, “...what is this [rail]road for...?”<sup>48</sup> Senator Read concluded his remarks concerning the terrain and the construction of the railway by stating, “The whole scheme is an absurdity, and should not be carried out.”<sup>49</sup> The comments from Senator Read are clearly politically partisan statements, for he knew that if the bill failed to succeed the Liberals were to be blamed for the failure, and the failure of the bill might be an inducement to support the Conservatives in the next federal election. Although I would agree that

---

<sup>44</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 745 (Mr. Read, Senator).

<sup>45</sup> See Library and Archives Canada, Department of Transport Fonds, RG12, Vol. 1980, File #3556-48, Part 1 – 1875-1881, Report of the Esquimalt and Nanaimo Railway, from Marcus Smith, Railway Engineer to Amor De Cosmos, 11 May 1880, page 3.

<sup>46</sup> Library and Archives Canada, Department of Transport Fonds, RG12, Vol. 1980, File #3556-48, Part 1 – 1875-1881, Letter from Sandford Fleming, Engineer-in-Chief of the Canadian Pacific Railway to Charles Tupper, 17 March 1879.

<sup>47</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 743 (Mr. Read, Senator).

<sup>48</sup> Ibid.

<sup>49</sup> Ibid., 744.

the construction of the railway would be difficult to achieve and carry out, it is a partisan excuse to claim that this railway would be too difficult to achieve for many other public works projects in Canada were also very challenging and difficult. If the Canadian government was involved in construction of a railway that crossed the Rocky Mountains surely it could build this one hundred and five kilometre railway over complicated territory. Regardless of the partisan behaviour, the senators did demonstrate a sober second thought with their concern over the terrible terrain, which usually equates to more money for the successful completion of the project.

The fourth and final aspect of the bill which the Senate did not view favourably concerned the financial cost associated with the construction of the railway to Canada. The surveys were incomplete and, as a result, there was no true concrete assessment of the actual cost of the railway, only estimates, and these estimations were high. One estimate by Senator James Aikins (Conservative – Ontario) suggested that the railway would cost two and a half million dollars, which “...was a large price to pay...”<sup>50</sup> Another estimate was by Senator Read and he suggested that it would cost Canada almost four million dollars.<sup>51</sup> Senator Read said, “The last census report says there are 5,959 souls...for these we are to build a railway, costing about \$4,000,000, an expenditure of over \$640 per head.”<sup>52</sup> Furthermore, he stated, “While I feel we must do everything reasonable to satisfy British Columbia, we must not make ourselves ridiculous.”<sup>53</sup> Although Senator Read’s comments might seem brash, his comments clearly reveal how he, among others, demonstrated the characteristics of a chamber of sober second thought that contemplated the specifics of proposed legislation such as the financial costs that would be imposed on Canada if approved. However, I would argue some of the arguments in the debate which could be interpreted as a sober second thought might actually be partisan in nature. Very few Conservative senators actually promoted the bill, the majority of them failed to mention that British Columbia joined Canada on high spirits and some Terms of Union, which now the province was growing bitter

---

<sup>50</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 739 (Mr. Aikins, Senator).

<sup>51</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 744 (Mr. Read, Senator).

<sup>52</sup> Ibid.

<sup>53</sup> Ibid., 745.



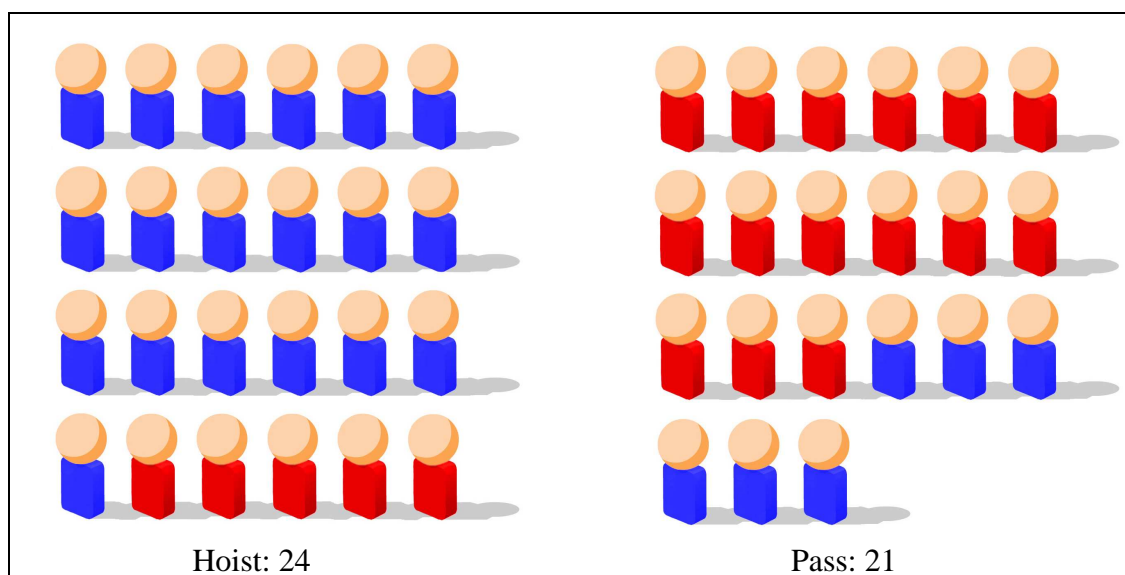
and the federal government was doing very little to alleviate the situation. It is not really national thinking when they do not want to improve the health and relationship of the region nor federation at large.

From the viewpoint of the people of British Columbia, they had waited long enough for the railway to be constructed from the railway networks in central Canada to the pacific coast. With the introduction of the Esquimalt and Nanaimo Railway Bill, the federal government believed the pressure and tension in the federal-provincial relationship would ease, but it appeared that some people were now against this railway bill and British Columbia itself. One of the senators from British Columbia finally rose in the Senate and commanded the attention of the chamber. Senator Robert Carrall (Conservative – British Columbia) stated, “The blame of these expensive works had been thrown on British Columbia, which had been treated as too troublesome and expensive a legacy – as if she alone needed this railway, and not Canada also.”<sup>54</sup> This railway was not a small local line on a far island in Western Canada, it was a railway for which all of Canada would benefit, British Columbia would benefit from the economic advantages of a railway in place, and in addition it would generate more settlement within the province. It would also benefit the federation as it would demonstrate that the federal government could complete major public works projects throughout the federation which would raise the provinces’ confidence of the relatively new federal government.

---

<sup>54</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 740 (Mr. Carrall, Senator).

### Diagram 3.2 – The Senate vote regarding the Esquimalt and Nanaimo Railway Bill<sup>55</sup>



The Esquimalt and Nanaimo Railway Bill vote, there were 45 senators present for the vote. 19 Conservatives and 5 Liberals voted in favour of the Hoist, while 15 Liberal senators and 6 Conservative senators voted against the hoist.

### The Hoist Amendment

Before the vote could be cast for the second reading in the Senate, Senator James Aikins (Conservative – Ontario) moved for a special motion within the Senate chamber. Senator Aikins moved a motion for the inclusion of an amendment to the bill giving it a six month hoist.<sup>56</sup> According to parliamentary procedure a hoist amendment “...requests that a bill not ‘now’ be read a second time, but instead that second reading be postponed for three or six months.”<sup>57</sup> With respect to the Esquimalt and Nanaimo Railway Bill, Senator Aikins preferred to wait until more information was available to the Senate to review before making a decision on the construction of the railway. Other members of the Senate agreed with Senator Aikins. Senator Read stated, “In view of the circumstances I do think its time to pause before we are ruined in almost useless work. I therefore have great pleasure in supporting the amendment for the...hoist.”<sup>58</sup> The vote for the hoist amendment had

<sup>55</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada* (1875), p. 283.

<sup>56</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 748.

<sup>57</sup> House of Commons. “Hoist Amendment to Bills.” Legislative Process, [http://www.parl.gc.ca/compendium/web-content/c\\_d\\_hoistamendmentsbills-e.htm](http://www.parl.gc.ca/compendium/web-content/c_d_hoistamendmentsbills-e.htm) (Date created unknown, date revised March 2006, date last accessed on 31 August 2011).

<sup>58</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 746 (Mr. Read, Senator).

precedence over the second reading of the bill and thus was taken first. The vote to hoist the Esquimalt and Nanaimo Railway Bill for six months was approved on 6 April 1875 by a vote of twenty-four yeas, and twenty-one nays.<sup>59</sup> Although the bill was not rejected it was nonetheless blocked from passage.

### What Killed the Bill?

The vote to hoist the Esquimalt and Nanaimo Railway Bill took place on 6 April 1875, within seventy-two hours of that vote the Governor General, Lord Dufferin, acted on the advice of Prime Minister Mackenzie and the Canadian Parliament was prorogued on 8 April 1875.<sup>60</sup> It remains unclear if the two events are directly connected, but regardless it occurred. By having the Canadian Parliament prorogued, the principal effect of ending the session was to end all parliamentary business, bills that were in Parliament that had not received Royal Assent ceased to exist, the fate of the Esquimalt and Nanaimo Railway Bill was among them. The only way the Esquimalt and Nanaimo Railway Bill could have proceeded was in a new session and the Government would then have had to reintroduce it as a new bill.<sup>61</sup>

Who should be blamed for killing the bill – the Senate or the Prime Minister? There is evidence that shows that the Prime Minister publicly announced that he intended to prorogue Parliament before the vote took place in the Senate.<sup>62</sup> Usually there are normal breaks in the parliamentary calendar and a Spring break was in order around this time. Perhaps the Conservative senators who were in majority saw a political opportunity in hoisting the bill knowing that Mackenzie intended to prorogue Parliament sooner than later for a Spring break. The Senate knew that

---

<sup>59</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada* (1875), p. 283.

<sup>60</sup> Parliament of Canada, "Bills Sent to the Other House that did not Receive Royal Assent." Legislation,

<http://www2.parl.gc.ca/Parlinfo/compilations/houseofcommons/legislation/billsbyresults.aspx> (Date created unknown, date last accessed on 31 August 2011).

<sup>61</sup> House of Commons. "Prorogation of Parliament." Parliamentary Cycle, [http://www.parl.gc.ca/compendium/web-content/c\\_d\\_prorogationparliament-e.htm](http://www.parl.gc.ca/compendium/web-content/c_d_prorogationparliament-e.htm) (Date created unknown, date revised March 2006, date last accessed on 31 August 2011).

<sup>62</sup> Quotes like: "The Bill...went to the Senate...on the eve of prorogation." in the *Daily British Colonist*, "The Esquimalt and Nanaimo Railway Bill and the Senate," 10 April 1875; "The Parliament will be prorogued tomorrow." in the *Daily Free Press*, "Dominion Parliament," 1 April 1875; "Parliament will not be prorogued this week." in the *Morning Chronicle*, "Ottawa," 30 March 1875. (Halifax, Nova Scotia).

prorogation would eliminate the bill from Parliament and rather than vote against the bill and reject it, the Senate would save face and ‘temporarily’ withhold passing it. A few days would pass and the bill would be gone because of the Prime Minister, thus making him the individual that would finally kill the bill. However there is no concrete evidence that the Senate purposely went about and did this. The available evidence shows the Senate hoisted the bill, the Prime Minister prorogued Parliament and the bill ceased to exist.

### **Evaluation of Public Reaction**

The Senate legislated over this railway bill thoroughly because it examined and scrutinized the core aspects and finer details and found that it was unwarranted of passage. Initial reactions to the blockage were mixed, some found the actions admirable while others were upset and even unsure of who to blame. While strongest reaction came from British Columbia, it is interesting to note that while the Government of British Columbia and the people of Vancouver Island were disappointed with the Senate’s decision to hoist the bill, people living on mainland British Columbia were pleased. Attitudes voiced in the provincial press included: “The British Columbia Government and the people of the island cried out that it was treachery.”<sup>63</sup> The people of British Columbia certainly have a “...grievance...”<sup>64</sup> British Columbia wants “...the terms, the whole terms and nothing but the terms...”<sup>65</sup> However the island railway and the Carnarvon Terms to the Mainlanders were “...neither acceptable nor just.”<sup>66</sup> There were mixed views of the public from British Columbia after the initial blockage of the bill in the Senate and termination after prorogation. The reaction in British Columbia was understandable because of the preceding delays of the trans-national railway across Canada legislation not being passed to enact the construction of a railway on Vancouver Island.

---

<sup>63</sup> Howay, *British Columbia: The Making of a Province*, 200-201.

<sup>64</sup> *Daily British Colonist*, “As to the Action of the Senate,” 12 June 1875.

<sup>65</sup> *Daily British Colonist*, “The Reject Bill,” 11 May 1875.

<sup>66</sup> *Daily British Colonist*, “Who Killed Cock Robin?” 1 May 1875.

## The Economic Cost

In other parts of the country the Senate was praised for blocking the bill. To get a grasp of the public view in Canada, the *Herald* in Montreal was quoted as saying, “We...congratulate the Senate upon getting rid of the Esquimalt Railway Bill.”<sup>67</sup> The *Globe* in Toronto stated, “...Canada is now relieved from the necessity of building [the railway].”<sup>68</sup> The most surprising admission came from the *Daily Colonist*, a regional newspaper based in Victoria, which quoted the *Mail* in which it thanked that Senate. “The Senate has well deserved, and will unquestionably receive the thanks of the community for the stand which it has taken....”<sup>69</sup> If there is one concluding message of the Senate’s actions of blocking the Esquimalt and Nanaimo Railway Bill it would be that, “...the Senate displayed its concern for saving public funds by rejecting a bill for the construction of the Esquimalt and Nanaimo Railway.”<sup>70</sup> This evidence of newspaper commentary in central and Western Canada show a consensus that the potential costs of the railway caused the Senate to examine the bill with a sober second thought to consider ‘was this worth it’? The majority of the senators answered no, it was too high and uncertain of expenditure and the Senate followed the intentions of the Fathers of Confederation because it scrutinized the bill and found that it was an unwarranted cost.

The Constitution reflects how the upper chamber is present in the Parliament “...to assure the public that proper precautions are being taken to guard against improvident use of the taxpayers’ money.”<sup>71</sup> Based on the Senate debate on the railway, as MacKay has argued, it is not surprising that the Senate blocked this bill “...on the ground that it was a quite unwarranted public expenditure.”<sup>72</sup> The Senate did not block nor reject this railway bill solely on the fact that it would have cost the federal government a great sum of money. Canada found itself in 1875 in the midst

---

<sup>67</sup> Cited in *Daily British Colonist*, “The Reject Bill,” 11 May 1875.

<sup>68</sup> *Globe*, “The Victoria and Nanaimo Railway,” 5 April 1875. (Toronto, Ontario).

<sup>69</sup> Cited in *Daily British Colonist*, “The Esquimalt-Nanaimo Railway,” 25 April 1875. (Quoting the *Mail*)

<sup>70</sup> Library and Archives Canada, Wishart Robertson Fonds, R9206-3-8-E, File # Senate Reform – 1949-1953, 3-8, Memorandum for Honourable Senator Bench, Canada, *Debates of the Senate – Official Report* (1 March 1934 – 15 March 1934), page 5 (Mr. Murphy, Senator). -----not in bib

<sup>71</sup> Library and Archives Canada, Wishart Robertson Fonds, R9206-3-8-E, File# Constitution of the Senate – 1944, 3-10, Memorandum for Honourable Senator Bench, page 4. -----not in bib

<sup>72</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 97.

of an economic depression.<sup>73</sup> The Senate reviewed the Esquimalt and Nanaimo Railway Bill as a piece of legislation that requested a vague and unspecific sum of money in the millions of dollars to be spent not prescribed by the Canadian government on a railway which was a local provincial project. In my opinion, the Senate would have failed the intentions of the Fathers of Confederation if it had passed the bill. Furthermore, during a speech in Victoria in 1876, the governor general of Canada, Lord Dufferin confirmed that the Senate's actions were the right course. He noted "The fact is that Canada at large...has unmistakably shown its approval of the vote in the Senate....that the Nanaimo and Esquimalt Railway cannot stand upon its own merits, and that its construction as a Government enterprise would be at all events at present a useless expenditure of public money."<sup>74</sup> The Senate saved millions of dollars of the public purse from being spent on the questionable island railway and it performed in accordance with the intentions of the Fathers of Confederation where they wanted a chamber that would slow down the pace of the legislation, examine and scrutinize it with a fresh perspective, and if that chamber was not completely satisfied in the details of a particular bill, it was to exercise its constitutional powers and block the legislation from passage through Parliament.

### **The Protection of Rights under the Constitution**

One of the foremost intentions and objectives of the Senate is the protection of the constitutional rights. The Esquimalt and Nanaimo Railway Bill encompassed an interesting situation because the Senate protected the constitutional provincial rights of British Columbia but in turn acted against the economic interests of the province. Within the *British North America Act*, Sections 91 and 92 divide federal and provincial areas of jurisdiction within the Canadian federation. During the Senate debate many had commented that this railway line was a local railway. Senator Robert Dickey (Conservative – Nova Scotia) said, "This railway was already a local line."<sup>75</sup> Senator James Aikins (Conservative – Ontario) said, "This local work

---

<sup>73</sup> See Ormsby, "Prime Minister Mackenzie, The Liberal Party, and the Bargain with British Columbia," 149.

<sup>74</sup> Cited in Robert A. MacKay, *The Unreformed Senate of Canada* (London: Oxford University Press, 1926), 122.

<sup>75</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 741

would cost another two and a half millions [sic] which was a large price to pay for a relaxation of the terms of Union.”<sup>76</sup> Furthermore one of the senators from British Columbia, Senator Carrall (Conservative) additionally noted that the Esquimalt and Nanaimo Railway was a local line too.<sup>77</sup> The *Daily British Colonist* stated, “A (railroad) connecting Nanaimo with Esquimalt is essentially a local work....”<sup>78</sup> Finally, the *Morning Chronicle* also echoed similar declarations mentioned in the Senate and other media sources stating, “This in reality is a local railway, and should not in justice be made a Dominion charge.”<sup>79</sup> The federal government should not involve itself with local railways because Section 92 lists what the province is in control of and within it includes that the province is in exclusive control over local railways.

The Senate was created to act as a protector of rights within a chamber of sober second thought; the Senate protected the rights of the province when the federal government tried to pass legislation that was not within the domain of the federal government as it would have infringed on the provincial rights of British Columbia. Section 92 of the *British North America Act* lists the subjects of exclusive provincial legislation. Specifically Section 92(10)(1) states that the province has exclusive control on “Local works...other than...railways...connecting the Province with any other...or extending beyond the limits of the Province.”<sup>80</sup> If the railway were to cross into the United States or cross into the North-West Territories, then the federal government would have the legal right of involvement. Section 92(16) of the *British North America Act* additionally states that the provinces have exclusive legislative control on, “Generally all matters of a merely local or private nature in the Province.”<sup>81</sup> There might be some confusion as to why the bill passed through the House of Commons. I would argue first, the Liberals had a majority in the House of Commons and it was a significant bill from the Government influenced by London, it

---

(Mr. Dickey, Senator).

<sup>76</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 730

(Mr. Aikins, Senator).

<sup>77</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 741

(Mr. Carrall, Senator).

<sup>78</sup> *Daily British Colonist*, “The Esquimalt-Nanaimo Railway,” 25 April 1875. (Quoting *The Mail*)

<sup>79</sup> *Morning Chronicle*, –No Title– 7 April 1875.

<sup>80</sup> See George Ross, *The Senate of Canada: Its Constitution, Powers, and Duties Historically Considered* (Toronto: The Copp, Clark Company Limited, 1914), 270.

<sup>81</sup> Ibid.

would be doubtful that the Liberals would embarrass their own leader and Government because of a possible constitutional infringement. Second, it was introduced and passed through because British Columbia allowed for this unique infringement on their provincial rights for the construction of a free local railway on Vancouver Island as they had agreed to the Carnarvon Terms. The Senate upheld the *British North America Act* when it blocked the Esquimalt and Nanaimo Railway Bill from passing in the Senate and acted in the proper constitutional manner that the Fathers of Confederation intended, and by doing so the Senate acted as an institution that protected the constitutional rights of that province.

### **Regional Representation**

The Senate was created to scrutinize legislation first and foremost, but secondly it was created to advocate and articulate Canada's regional concerns and express those on proposed legislation that came before the upper chamber. Of the three blocked bills considered in this thesis, the Esquimalt and Nanaimo Railway Bill was the most regionally based in which it directly related to a very specific part of Canada. Senators from British Columbia were placed centre stage to see if they articulated British Columbia's concerns and view points on the bill. This was a major challenge for British Columbia, as Western Canada was still being developed. An unfortunate challenge for this region of Canada was that it was not designated an official region within the Senate. Alberta and Saskatchewan did not yet exist as provinces, it was just Manitoba and British Columbia. There was no regional equality yet for Western Canada in the Senate, as it would be designated a Senate 'region' in 1915.<sup>82</sup> While the region of Ontario, Quebec, and the Maritimes had twenty-four senators each respectively, British Columbia only had three senators in 1875 that could speak on behalf of the province.<sup>83</sup> Focus was on these three senators to speak for the province.

---

<sup>82</sup> Senate of Canada, "A Legislative and Historical Overview of the Senate of Canada." Committees and Private Legislation Directorate, <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-E/pub-E/legislative-e.htm> (Date created unknown, date revised May 2001, date last accessed on 31 August 2011).

<sup>83</sup> British Columbia only had three senators during this period. The province would eventually be allocated a total of six senators. The three senators from British Columbia were: Senator Robert Carrall (Conservative), Senator William Macdonald (Conservative), and Senator Clement Cornwall (Conservative); Parliament of Canada. "Senators."



The first British Columbia senator who spoke was Robert Carrall. He felt that the members of parliament and other senators were being absurd because they had approved other so called 'local' railways in other parts of the country prior to the Esquimalt and Nanaimo Railway, yet they did not want to support this particular railway.<sup>84</sup> Senator Carrall (Conservative - British Columbia) also felt that the people of British Columbia wanted to have confidence in the federal government and without this railway the relationship could possibly be damaged.<sup>85</sup> He said, "...for the peace, good order, and welfare of this whole country...it [was his] duty to help the Government in carrying out the (bill)."<sup>86</sup> There was no denying from Senator Carrall that the railway was a local line, similar to other railway lines that were approved by Parliament, but for the welfare of the new federation, the Senate should approve it and get this railway constructed.

The second British Columbia senator who spoke was William Macdonald. Senator Macdonald (Conservative - British Columbia) did not speak at length but he did state that British Columbia consented to the new terms arbitrated by Lord Carnarvon and that British Columbia felt bound by the new terms and the federal government should be also.<sup>87</sup> He felt that some parliamentarians believed that British Columbia was being ridiculous in these new terms, however Senator Macdonald said, "British Columbia was not unreasonable in this matter."<sup>88</sup> The Senate should approve of this railway on Vancouver Island and let the work begin. Unfortunately the third senator from British Columbia did not speak during the debate.<sup>89</sup> When it was time to vote, actions speak significantly louder than words – all three senators from British Columbia voted against the hoist delay amendment.<sup>90</sup> They wanted action; they wanted construction to begin immediately – without delay.

---

<http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-57a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&PrimeMin> (Date created unknown, date Revised 1 March 2010, date last accessed on 31 August 2011).

<sup>84</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 740 (Mr. Carrall, Senator).

<sup>85</sup> Ibid., 741.

<sup>86</sup> Ibid.

<sup>87</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 742 (Mr. Macdonald, Senator).

<sup>88</sup> Ibid., 743.

<sup>89</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (6 April 1875), p. 748.

<sup>90</sup> Ibid.

Focus was not on the senators from British Columbia entirely as all senators in the Canadian Senate are to advocate and articulate their home regions' concerns. As mentioned above, Senator James Aikins (Conservative – Ontario), Senator Robert Dickey (Conservative – Nova Scotia), Senator Robert Read (Conservative – Ontario) were most vocal against the construction of the railway. They each mentioned the high financial cost of the local railway and they voted for the hoist amendment.<sup>91</sup> British Columbia in 1875 was sparsely populated, and these senators knew who would be paying for the construction of the railway. The senators acted in the interests of their regions, as Ormsby noted, "...to ease the burden on the taxpayers of Ontario [and eastern Canada]."<sup>92</sup> The people of Ontario, Quebec, Nova Scotia and New Brunswick had the larger population base and would be financing the railway on Vancouver Island with their taxes. The Government did not know exactly how much the railway was going to cost, how could the senators from primarily Ontario and Quebec immediately approve of a bill that their citizens would largely be financing, when they did not know and could not inform their citizens about how much, as tax payers, they would have to pay.

### **Senate Independence**

One of the original intentions of the Senate having appointed members was that it legislated with greater independence than that of the House of Commons. The appointed Senate was created to legislate on measures benefiting Canada and not necessarily to be swayed by strong gusts of public opinion of what was the most popular thing to do. Did the Senate demonstrate that it legislated as an independent chamber of sober second thought with the Esquimalt and Nanaimo Railway Bill? The primary cause of a loss of independence would be if political parties dictated the vote outcome and, secondly, if the political leaders outside the Senate tried to influence the vote. Clearly some political partisanship was involved with the vote; however that was not the full story.

If specifically the Conservatives were against this railway bill, more of them would have remained in the Senate during the debate and would have voted. When I

---

<sup>91</sup> Ibid.

<sup>92</sup> Ormsby, "Prime Minister Mackenzie, The Liberal Party, and the Bargain with British Columbia," 151.

examined the attendance records for the evening when the debate occurred and the vote took place, I found that there were fifty-eight senators present at the beginning of business that afternoon.<sup>93</sup> However the last item on that day's agenda was the Esquimalt and Nanaimo Railway Bill. By the time the vote took place only forty-five senators were present and voted.<sup>94</sup> Of the thirteen absent senators, twelve were Conservative.<sup>95</sup> If the Conservative-controlled Senate was truly against the bill for exclusively partisan reasons there would have been a greater presence of Conservatives in attendance for the debate and vote. Secondly, an examination of the list of senators who voted for and against the hoist amendment showed that two senators voted in favour of the hoist amendment were Liberal senators recently appointed on the recommendation of Alexander Mackenzie.<sup>96</sup> This demonstrated a heightened level of independence because it is often assumed that a senator who has recently been appointed to the Senate would typically be loyal to the individual who appointed them into the upper chamber. Not fearing that any real consequences would develop because the senators were appointed for life, a number of Liberal senators showed their independence and separation from their political leaders by voting in favour of the hoist amendment because they considered that even though it was not the most popular action, it was the correct thing to do for Canada.

The final indication that the Senate acted with some independence was that it blocked the Esquimalt and Nanaimo Railway Bill, which was arbitrated by a government outside of Canada. The senators mentioned numerous times that this bill was the result of Lord Carnarvon's involvement within a dispute between the federal government and the province of British Columbia. Perhaps, as argued in the *Daily British Colonist*, Lord Carnarvon and the British Government tried to "...whip perfidious Canada and dishonest Mackenzie into doing justice to [British] Columbia?"<sup>97</sup> Canada remained highly loyal and had great respect for Britain, both before and after Confederation, and many senators originated from Britain, however

---

<sup>93</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada* (1875), p. 283.

<sup>94</sup> Ibid.

<sup>95</sup> Parliament of Canada. "Senators."

<http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-57a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&PrimeMin> (Date created unknown, date revised 1 March 2010, date last accessed on 31 August 2011).

<sup>96</sup> See Howay, *British Columbia: The Making of a Province*, 200.

<sup>97</sup> *Daily British Colonist*, "The New Terms," 16 January 1875.

they were now Canadians and recognized that they were legislating over an intra-national disagreement and they did not appreciate British interference impacting on the issue. Since Confederation, which occurred less than ten years before, Canada has shown, as D.G. Creighton has argued, "...a somewhat touchy concern in its independent status...to insist upon its independence from external control...."<sup>98</sup> How could a young nation grow stronger if its colonial counterparts stepped in and got involved when there was a dispute within its borders? Queen Victoria created the Dominion of Canada in 1867 and it was given the power to legislate and govern within its borders. For a nation to mature it needs to sort out these issues by itself. Not only was the blockage of the Esquimalt and Nanaimo Railway Bill the first major legislative confrontation between the House of Commons and the Senate, but it was also one of the first instances of the Canadian Parliament ultimately dictating its own course of action saying no to the British government.

## **Conclusion**

With the creation of the new federation in 1867, came a new national parliament consisting of an upper and lower chamber. The upper chamber – the Senate – was to discharge an important role within Parliament, and it was constitutionally granted with the power to block legislation from the House of Commons and act as an independent chamber of sober second thought on all proposed legislation. It was only a matter of time before the first major confrontation between the House of Commons and the Senate occurred after Confederation and it was in 1875 when the Senate blocked an important piece of legislation that had been passed by the lower chamber. The failure to abide to specific union terms agreed upon with British Columbia, led to the clash and blockage of a specific piece of government legislation that called for the construction of an additional railway between two small towns of Esquimalt and Nanaimo.

The Esquimalt and Nanaimo Railway Bill was blocked by the Canadian Senate. Canada was a nation that was growing but it was young and not as wealthy as others, thus it had to exercise fiscal prudence to projects deemed unnecessary. There shall always be disagreement and debate on the public projects that a Parliament

---

<sup>98</sup> D.G. Creighton, "Canada in the English-Speaking World." *The Canadian Historical Review* 26, 2 (1945): 126.

should support. The Senate deemed the construction of the railway between Esquimalt and Nanaimo to be superfluous and did not approve. The Senate took a strong stand for fiscal prudence during the developing and expanding years following Canadian Confederation against excessive spending when it blocked this bill. In part the Senate help frame and advance the country, and it took a progressive path for greater independence by pushing British intervention into Canadian affairs back. If the Esquimalt and Nanaimo Railway Bill passed, it would have set a dangerous precedent. The passage would have demonstrated that if a province falls into a disagreement with the federal government, provinces could seek refuge with the British government in trying to assist its cause within an intra-national issue. The Senate also took a strong stand in holding up the *British North American Act* and protected the rights of the provinces. However, there was some evidence of political partisan block voting, but it was not nearly as intense as that found within the analysis of the Naval Aid Bill and to a large extent with the Old Age Pension Bill. Although the Senate was largely Conservative there was still a strong showing of Liberal senators during the debate, and Conservatives with Liberals together in a majority concluded that the project was not in the best interests of the nation.

## **Chapter Four: The Naval Aid Bill**

## **Introduction**

The Canadian parliamentary session in the late autumn of 1912 and the spring of 1913, was unlike any parliamentary session that had occurred in the past. Records were broken, rare parliamentary procedures were used, freedom of speech issues arose, the public was divided, and all of this surrounded one proposed piece of legislation in Parliament. In late 1912, Prime Minister Robert Borden introduced the Naval Aid Bill which sought a thirty-five million dollar contribution towards the construction of three Dreadnought battleships for the British Royal Navy. Unlike the Esquimalt and Nanaimo Railway Bill and the Old Age Pension Bill, the Naval Aid Bill proved to be nationally and internationally significant, particularly as it generated a critical debate during the emergence and development of Canadian international policy in an era of British decolonization.

The debate on the proposed legislation in the House of Commons was led by two political titans of their time: Robert Borden (as Conservative Prime Minister) sparring against Wilfrid Laurier (as Liberal leader of the Official Opposition). It was a dynamic debate that focused not only on the proposal that the federal government spend thirty-five million dollars on battleships but also on key questions of Canadian national development and independence. Countless issues arose within this divisive debate, including the prudent use of Canadian tax dollars, the protection of Canadian rights under the *British North America Act*, and broader questions of British influence on Canadian affairs. The Naval Aid Bill only passed through the Conservative-controlled House of Commons with the adoption of the closure of debate rules. After extensive debate, it was then blocked in the Liberal-controlled Senate. Senators considered that opinions were too divided for Parliament to pass the bill and that the issue should be brought to the general public for consideration

Of all the Senate's actions within the Canadian Parliament during the first sixty years of its existence, none was more prominent than the Senate's rejection of Prime Minister Borden's Naval Aid Bill. In this chapter I argue that, although the Senate failed to follow the intentions of the Fathers of Confederation for Canada's upper chamber, as its independence was greatly influenced, its decision to block the legislation was the correct course of action. In short, the Senate's actions on the Naval Aid Bill were a failed success.

## **Summer of 1912**

Britain had been pushing the dominions since the late 1890s for financial contributions in one form or another from the Empire's dominions for the Royal Navy.<sup>1</sup> It was not surprising that when Prime Minister Borden travelled to Britain in the summer of 1912 to discuss defence and naval issues – additional contributions were brought up. The primary motive for financial assistance into the Royal Navy surrounded the naval arms race between Britain and Germany. As the Canadian Broadcasting Corporation noted, Britain would not allow German supremacy "...with her naval tradition and prestige, and her utter reliance on sea power as a means of defence, (Britain) could not tolerate any rival."<sup>2</sup> After numerous meetings throughout the summer in London with the British Admiralty, Borden was convinced that British supremacy was in question and Britain faced a grave emergency in the struggle for the naval supremacy against Germany.<sup>3</sup> Prime Minister Borden left London for Canada for the start of a new parliamentary session in Ottawa with the inclusion of a thirty-five million dollar emergency contribution to Britain as the centre piece of the 1912 Speech from the Throne.

## **The Naval Aid Bill in the House of Commons**

The second session of Canada's Twelfth Parliament opened on 21 November 1912 with the Governor General reading the Speech from the Throne, which surrounded the central component of naval contribution to the British Government.<sup>4</sup> Within his speech included, "During the past summer four members of my Government conferred in London with His Majesty's Government on the question of naval defence. Important discussions took place and conditions have been disclosed which, in the opinion of my advisors, render it imperative that the effective Naval forces of the Empire should be strengthened without delay. My advisors are convinced that it is the duty of Canada at this juncture to afford reasonable and

---

<sup>1</sup> See J.M. Bumsted, *The Peoples of Canada: A Post-Confederation History* (Don Mills: Oxford University Press, 2004), 154.

<sup>2</sup> Canadian Broadcasting Corporation, *The Apprenticeship* (Montreal: Canadian Broadcasting Corporation International Service, 1967), 143.

<sup>3</sup> See Robert A. MacKay, *The Unreformed Senate of Canada* (London: Oxford University Press, 1926), 125.

<sup>4</sup> See John C. Hopkins, *The Canadian Annual Review of Public Affairs 1913* (Toronto: The Annual Review Publishing Company, 1914), 138.



necessary aid for that purpose.”<sup>5</sup> Prime Minister Borden rose in the House of Commons on 5 December 1912, which in turn marked the start of one the most record breaking, prolonged and aggressive debates that ever took place in the Canadian Parliament, as he introduced the Naval Aid Bill formally known as *An Act to Authorize Measures for Increasing the Effective Naval Forces of the Empire (1912)*.<sup>6</sup> Borden said: “...the day (had) come when either the existence of this Empire will be imperilled or the young and mighty dominions must join with the motherland to make secure the common safety and the common heritage of all.”<sup>7</sup> Prime Minister Borden continued, “...we ask the people of Canada through their Parliament to grant...to His Majesty the King of Great Britain and Ireland and of the overseas dominions, in order to increase the effective naval forces of the Empire, to safeguard our shores and our seaborne commerce, and to make secure the common heritage of all who owe allegiance to the King.”<sup>8</sup> The cost on Canada’s part to increase the effective naval forces of the Empire was thirty five million dollars; this would be put towards the construction of three Dreadnought battleships. Concerning these three Dreadnoughts, Borden said, “These ships will constitute an aid brought by the Canadian people to His Majesty the King as a token of their determination to maintain the integrity of the Empire and to assist in repelling any danger which may threaten its security.”<sup>9</sup> Borden finished his speech with, “Bringing the best assistance that we may in the urgency of the moment, we come...to defend on sea as well as on land our flag, our honour and our heritage.”<sup>10</sup> There were very strong notions present of a dire international situation and Prime Minister Borden argued that Canada should perform its duty of assisting the maintenance and the defence of the Empire at large.

After the Prime Minister’s speech, the Naval Aid Bill received its first reading in the House of Commons. The naval aid debate had started, and as the C.B.C. had stated, it marked the beginning of “...one of the longest, most

---

<sup>5</sup> Cited in John C. Hopkins, *The Canadian Annual Review of Public Affairs 1912* (Toronto: The Annual Review Publishing Company, 1913), 64.

<sup>6</sup> Dominion of Canada, *Journals of the House of Commons of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, 1912-13, p. 54.

<sup>7</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, 1912-1913, (5 December 1912), p. 676 (Mr. Borden, Prime Minister).

<sup>8</sup> Ibid., p. 687-688.

<sup>9</sup> Ibid., p. 690.

<sup>10</sup> Ibid., p. 693.

implacable, and more famous debates since Confederation.”<sup>11</sup> No one expected the debate to become so divisive and last as long as it did in the House of Commons, it was unprecedented and it did not reach the Canadian Senate until May of 1913, something that the Senate took into account.

### The Conservative Party Policy

The Conservative policy was laid out through Prime Minister Borden’s opening address and in subsequent days and weeks by fellow Conservative members. The Conservative policy was based on contribution to the British Empire, to ensure its cohesive defence. Prime Minister Borden believed that Britain needed assistance in its maintenance of naval supremacy against the Germans and that by contributing thirty-five million dollars, Canadians would demonstrate to “...the mother country a pledge of loyalty....”<sup>12</sup> As Borden argued, this pledge of loyalty reflected how for “...forty-five years as a Confederation we have enjoyed the protection of the British Navy without the cost of a dollar....”<sup>13</sup> In short, as Britain had protected Canada through its early years as a dominion, Borden considered it was a critical time for Canada to return this favour. It was time for action on Canada’s part to assist the mother country in need. Britain was in need because Britain was “...not a great military power, and it has based its security in the past as in the present almost entirely on the strength of the navy. A crushing defeat upon the high seas would render the British islands or any of the dominions subject to invasion by any great military power.”<sup>14</sup> If the Royal Navy was at risk of destruction, Canada could be at risk of invasion. If the Royal Navy failed to maintain its supremacy, a potentially dire situation could erupt for both Canada and Great Britain, and Prime Minister Borden felt that the thirty-five million dollar contribution would assist in the maintenance of that supremacy.

The Conservatives felt that a contribution towards the creation of three additional battleships for the Royal Navy was better for the Empire as a whole for the Royal Navy was already established. By having one navy, there would be one plan

---

<sup>11</sup> Canadian Broadcasting Corporation, *The Apprenticeship*, 147.

<sup>12</sup> Cited in *New York Times*. “Canada Rejects Naval Aid,” 31 May 1913. (New York City, New York)

<sup>13</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (5 December 1912), p. 691 (Mr. Borden, Prime Minister).

<sup>14</sup> *Ibid.*, p. 684.

which would result in a more cohesive defence strategy. Speaking in the House of Commons, Conservative W.F. Cockshutt said, "...I believe in the final analysis that it will be found that one fleet to defend the Empire is more economical and more effective than several units scattered throughout the world, and that it is far more likely to meet the enemy successfully than any units that would be thousands of miles away when the battle was fought...."<sup>15</sup>

The Conservative policy rested on Imperial unity and common defence within the Empire. Prime Minister Borden said: "What are you to do? Are you to have one Empire, one foreign policy, one combined naval force, to resist every peril or are you to have five foreign policies and five scattered navies to go down against the attack which may come upon them at any time? (...) The continents are separated, but the sea is one...when I say that the security of this Empire cannot be maintained and preserved without a combination of the naval forces of the Empire under one control, at least in time of war."<sup>16</sup> The Conservatives did not see the benefit of enlarging the Royal Canadian Navy, the Conservative policy was of contribution towards the maintenance of British naval supremacy and that was in accordance with the wishes of the British government and the Admiralty in London.

### The Liberal Party Policy

Wilfrid Laurier, the Liberal leader of the opposition in the House of Commons, was strenuously opposed to Prime Minister Borden's naval contribution to Britain. Every aspect of the Naval Aid Bill was opposed by the Liberals as their contrasting naval policy was based on Canadian self defence. The Liberals did not wish to see thirty-five million dollars given to Britain for Canada gained nothing in the contribution. Wilfrid Laurier wanted the promotion of further development of the Royal Canadian Navy, Laurier said, "The policy of the Liberal Party is the same as it ever was, a Canadian navy built, equipped, maintained and manned in Canada."<sup>17</sup> As Hopkins has argued, the Liberals accepted the responsibility of shared Empire

---

<sup>15</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (16 January 1913), p. 1651 (Mr. Cockshutt, Member of Parliament).

<sup>16</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (27 February 1913), p. 4265 (Mr. Borden, Prime Minister).

<sup>17</sup> Cited in *Globe*. "Liberal Leader Defines Issue Between Parties." 22 March 1913. (Toronto, Ontario).

defence but considered that it should be executed through a Canadian naval force.<sup>18</sup> In their opinion, Canada could not and should not permanently expect Britain to safeguard Canadian Pacific or Atlantic waters. The Royal Canadian Navy was young and still in its preliminary stages, however an injection of thirty-five million dollars, the Liberals sought, would have been a significant boost in its further development and maturity.

The Liberals argued that if Canada was to spend thirty-five million dollars on defence infrastructure, it should be directly invested in Canada for the protection of Canadians. Mr. Laurier said, "...Canada, with a population of over seven million people, with six thousand miles of seashore on the Atlantic and six thousand on the Pacific, and with harbours and cities on both coasts, cannot remain without a naval defence of some kind."<sup>19</sup> The underscoring idea of the Liberals surrounded self-reliance and self-defence. Since 1867 expansion was occurring rapidly within the nation. At some point Canadians would be at its own devices to defend itself, and the Liberals felt it was the suitable time to have a major cash injection into the Royal Canadian Navy as the Royal Navy was pulling out of Canadian shores. For decades Britain argued that Canada needed to be more self-reliant, particularly in national defence. The Liberals saw this opportunity to take a large step forward towards obtaining self-reliant Canadian national defence. The Liberals and Laurier also knew their support came from Quebec and French speaking Canadians. The French-Canadian view point was much more pacifist than that of English-Canadians, and French-Canadians were attached to Canada alone. French-Canadians did not feel strongly about Canada's involvement in European conflicts when there was no aggressive attack taken directly towards Canada. Promotion of the Royal Canadian Navy within Canada was a safe political move for the Liberals.

Robert Borden and Wilfrid Laurier were two of the most powerful political titans of their time. Both political leaders passionately argued in favour of their fundamentally opposing naval policies. These two factors developed into the perfect formula for the historical political debate. The policy of the Conservative Government was that of concentration and centralization within the British Empire,

---

<sup>18</sup> Hopkins, *The Canadian Annual Review of Public Affairs 1913*, 180.

<sup>19</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (27 February 1913), p. 4248 (Mr. Laurier, Leader of the Opposition).

while the Liberal policy was that of self-reliance, self-defence and co-operation within the Empire. No less than a month after the Naval Aid Bill was introduced, debate picked up pace with the Liberals passionately opposing Borden's contribution plan. No one knew how long the debate in the House of Commons would last, but the *Montreal Gazette* commented that the debate on the Naval Aid Bill would be, "...one of the most spectacular parliamentary fights in Canadian history."<sup>20</sup>

The cornerstones of the Naval Aid Bill were the areas where the Liberals found fault. First the Liberals felt that providing a huge sum of money to the British government for naval defence would be a retrogressive step in Canadian-British relations. The Liberal argument was that, "It reverses the policy of the past seventy years and is a retrograde step in the constitutional relations existing between the Motherland and Canada."<sup>21</sup> Second, "The Conservative policy...(was) one of inactivity in holding the country back from a permanent [naval] policy...."<sup>22</sup> The Royal Canadian Navy was established in 1910 and needed financial resources. The Liberals wished to see the money injected into the further development of the Royal Canadian Navy, they did not want thirty-five million dollars given away with nothing to show for it nor have any lasting result within Canada. Liberal member of parliament, Georges Boivin said, "...instead of giving this money to a nation rich...more than able to take care of herself, it [should] be spent at home, and that the greatest possible portion of it may find its way into the pockets of our mechanics, our labourers, our foundrymen, our builders; then later into the pockets of our sailors; our officers, and all these to our traders and farmers."<sup>23</sup> Third, if Canada was simply to provide Britain with thirty-five million dollars, it could appear that Canada was "...a nation of substitutors, willing to allow others to take our places in the firing line in the defence of the Empire."<sup>24</sup> Fourth, the Canadian Parliament would not be in control of the three Dreadnoughts that would be built, nor would they be placed in the Atlantic Ocean to defend Canada. If built, the three Dreadnoughts would be

---

<sup>20</sup> *Gazette*. "Naval Debate Resumes Tomorrow." 13 January 1913. (Montreal, Quebec).

<sup>21</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1912, 78.

<sup>22</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1913, 149.

<sup>23</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (16 January 1913), p. 1614 (Mr. Boivin, Member of Parliament).

<sup>24</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1913, 149.

stationed near Gibraltar.<sup>25</sup> The Liberals argued the Naval Aid Bill was a retrogressive move for Canada; it did nothing to help the Royal Canadian Navy; Canada would have no control over the three ships and they would not be used for Canadian defence.

### Filibuster

Both the Liberals and the Conservatives were adamant that their own policy was the superior policy. To reflect more Liberal ideas, the Liberals argued for amendments to the Naval Aid Bill, but lacked the numbers in the House of Commons to pass amendments. Since the Liberals could not successfully amend the bill, the next available option was to obstruct the passage of the Naval Aid Bill. If the Liberals obstructed long enough, the Liberals thought the Conservatives might either allow amendments or discard the bill altogether.

History was made during this debate, specifically after the second reading of the Naval Aid Bill on 28 February 1913.<sup>26</sup> At this point, the Liberals obstructed to levels which set new Canadian parliamentary records.<sup>27</sup> The easiest and most effective method of obstruction is the classic filibuster. If there was something to be said, the Liberals said it; on the other hand the Conservatives said, "...as little as possible and hoped the Liberals would succumb to physical exhaustion in order to proceed."<sup>28</sup> Every single part and clause of the Naval Aid Bill, as Borden stated, was "...discussed and the debate [was] characterized by irrelevancy and by constant and tiresome repetition...."<sup>29</sup> Throughout February and March, there were "...whole seas of speech – eloquent and abusive, discursive and concentrated, keen, incisive and logical, angry and unreasonable, patriotic and the reverse."<sup>30</sup> The Conservatives would not deviate from their policy, and no amendments would be accepted - the Liberals wanted amendments to the Naval Aid Bill and continued to speak.

---

<sup>25</sup> *New York Times*. "Canada Rejects Naval Aid," 31 May 1913.

<sup>26</sup> Dominion of Canada, *Journals of the House of Commons of the Dominion of Canada* (1912-13), p. 311.

<sup>27</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1913, 159.

<sup>28</sup> Gilbert Norman Tucker, *The Naval Service of Canada: Its Official History, Volume 1, Origins and Early Years* (Ottawa, King's Printer, 1952), 195.

<sup>29</sup> Library and Archives Canada. Robert Borden Fonds, R6113-2-3-E, Reel C-4347 "Naval Aid Bill 1912," March 1913, page 66605.

<sup>30</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1913, 140.

The ability to filibuster and obstruct was rather easy. As noted in the *Gazette*, "...obstructive talk called for little or no mental effort, it (was) easy to maintain."<sup>31</sup> The Liberals felt this could be a pivotal moment in both the relations with the British Government and the further development of the Royal Canadian Navy – it was worth the fight and they were steadfast. The debates on the naval bill lasted throughout countless nights, some nights the debate would continue until 6:00am the next morning.<sup>32</sup> There were members of the Liberal caucus that spoke, unbroken, for up to four and a half hours, which set new Canadian parliamentary records.<sup>33</sup> As of 20 March 1913, there was 232 hours of debate on the Naval Aid Bill, where ninety per cent of the members speaking were Liberals.<sup>34</sup> There were over four thousand columns of written text in Hansard.<sup>35</sup> One Ottawa news correspondent for the *Manitoba Free Press* described the House of Commons on 7 March 1913, by writing, "Members on both sides of the House are beginning to show signs of the continued strain, with unshaven chins and haggard, tired faces. The chamber at all times badly ventilated is beginning to smell musty and stale and is littered with papers and grimy with dust....There is no opportunity for the use of the broom and there is no time given for fresh air to replace the big supply of devitalized atmosphere which at all times pervades the chamber. Everything has a 'morning after' appearance."<sup>36</sup> Very little effort was made by the Conservatives; all effort was by the Liberals. The Liberals fought so hard because they were restlessly dissatisfied with every aspect of the Naval Aid Bill, they were adamant that it was flawed legislation.

The Liberals were displeased with the involvement of the British Government and the Admiralty within current Canadian affairs. The Naval Aid Bill was clearly introduced into the Canadian Parliament after, "...Admiralty intervention in Canadian affairs."<sup>37</sup> The Naval Aid Bill was the result of the "...interference by the

---

<sup>31</sup> *Gazette*. "The Naval Situation." 23 February 1913.

<sup>32</sup> See *Manitoba Free Press*. "Week Continuous Debate Expected." 5 March 1913. (Winnipeg, Manitoba).

<sup>33</sup> See *Manitoba Free Press*. "High Standard of Debate Continues." 8 March 1913.

<sup>34</sup> *Manitoba Free Press*. "Threat of Closure by Premier Borden." 20 March 1913.

<sup>35</sup> *Ibid.*

<sup>36</sup> *Manitoba Free Press*. "Well Planned Effort to Apply Gag Was Failure." 7 March 1913.

<sup>37</sup> Hopkins, *The Canadian Annual Review of Public Affairs 1913*, 146.

British Government....”<sup>38</sup> The Liberals were being rather nationalistic and strived for greater independence and greater independent decision making. However, Borden disagreed with this as he wrote in his notes, “There is no interference with autonomy in Parliament making a special vote of money for this or any other similar purpose.”<sup>39</sup> The Liberals felt that if Canada came to the conclusion that Britain needed assistance, Canada would come to that conclusion by weighing the facts itself. The Liberals additionally questioned the “emergency” Britain faced. Wilfred Laurier stated that if Britain was really in danger then Prime Minister Borden would have asked for three times the amount of money mentioned in the Naval Aid Bill.<sup>40</sup> The bill called only for three ships, the “emergency” to Laurier and the Liberals failed to exist.

### Plebiscite

As the debate within the House of Commons continued, members of parliament began to demand that such a considerable issue be brought to the people of Canada to decide its fate. Wilfrid Laurier demanded a plebiscite, “...we challenge the verdict of the Canadian people.”<sup>41</sup> Liberal member Mr. Guilbault echoed Laurier when he argued, “...the only way of ascertaining what the people of Canada desire to do in regard to the matter of defence is by the taking of a plebiscite.”<sup>42</sup> However the Prime Minister utterly disagreed because to Borden, the Canadian people would have an opportunity to express their opinions as a general election was approaching. Borden said, “I pointed out some weeks ago that even if this measure passed, these ships could not be put in commission until after a general election had been held in this country....”<sup>43</sup> The public could vote the Conservatives out of office and replace them with the Liberals if they did indeed disagree, so the Prime Minister decided no plebiscite would be held on the naval issue. If the Government were to hold one, the challenge with a plebiscite is that it is imperative that they win it; it would be a

---

<sup>38</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1912, 36.

<sup>39</sup> Library and Archives Canada. Robert Borden Fonds, R6113-2-3-E, Reel C-4347 “Notes on Opposition Objections to the Naval Aid Bill,” 1913, page 66617.

<sup>40</sup> Tucker, *The Naval Service of Canada: Its Official History, Volume 1, Origins and Early Years*, 191.

<sup>41</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (27 February 1913), p. 4248 (Mr. Laurier, Leader of the Opposition).

<sup>42</sup> *Manitoba Free Press*. “Wants Plebiscite on Navy Question.” 25 February 1913.

<sup>43</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (9 May 1913), p. 9546 (Mr. Borden, Prime Minister).



tremendous political loss if they lost their own plebiscite and a huge political gain for the opposition. Based on media reports throughout Canada there was rather balanced support for both Conservative and Liberal naval policies and a degree of uncertainty was present for who had more support.

After four months of continued debate on the Naval Aid Bill, there was no end in sight. The debate was turning into a political farce within the Canadian Parliament. According to Liberal member Mr. Thomson, the debate had reached "...an epidemic of dumbness...."<sup>44</sup> Things were being said which were redundant, irrelevant and unproductive and by March the debate was getting out of control. Hopkins stated, "Speeches began to get angry, tempers were short and replies or counter replies sharp and swift. Many emphatic remarks were made."<sup>45</sup> On 9 March 1913 a remarkable incident occurred while Liberal member Fred Pardee was speaking. Two Conservative members rose, lit and threw firecrackers at the Liberal caucus, across the floor of the House of Commons. The action sent the Sergeant-At-Arms chasing the two out of the Chamber.<sup>46</sup> A heated stalemate then developed between the two political parties in the House of Commons.

### Closure

The only way Borden could move beyond the stalemate that had arisen in the House of Commons and advance the Naval Aid Bill was to introduce closure. As Robert Marleau and Camille Montpetit has described, "Closure is a procedural device used to bring debate on a question to a conclusion...."<sup>47</sup> The deployment of closure had never occurred in Canadian parliamentary history before.<sup>48</sup> With the introduction of closure, the Liberal ability to filibuster would cease. Extreme conditions demanded extreme actions and on 9 April 1913, closure had been successfully passed with the Conservative majority.<sup>49</sup> The Liberals were not

---

<sup>44</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (4 February 1913), p. 2681 (Mr. Thomson, Member of Parliament).

<sup>45</sup> Hopkins, *The Canadian Annual Review of Public Affairs 1913*, 160.

<sup>46</sup> See *Globe*. "Dramatic Deadlock Temporarily Ended." 10 March 1913.

<sup>47</sup> Robert Marleau, and Camille Montpetit, "The Curtail of Debate: Closure." Parliament of Canada. <http://www2.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Ch16&Seq=6&Lang=E> (Date created January 2000, date last accessed on 31 August 2011).

<sup>48</sup> See Desmond Morton. *A Military History of Canada* (Toronto: McClelland and Stewart Ltd, 1999), 126.

<sup>49</sup> See Hopkins, *The Canadian Annual Review of Public Affairs 1913*, 165.

impressed. “The House was instantly in a wild tumult, shouts of “shame” rang from the Opposition benches, while Sir Wilfrid Laurier, himself, for one of the rare moments in his public life, showed anger and used the same word.”<sup>50</sup> According to the Liberal party’s view, closure was an encroachment on Canadian democracy and free speech. Wilfrid Laurier rose in the House of Commons and said, “[the Government has taken] from me the privilege which was mine by constitutional right...[and] (imposed) a gag upon me, and to prevent me from expressing the views of the Opposition with regard to this very important question.”<sup>51</sup> Half of Parliament and a growing portion of the Canadian public showed disapproval for the Prime Minister’s actions, but the Conservatives came fighting back.

In reply to Wilfrid Laurier’s comment, Prime Minister Borden said, “If there has been any gagging, it has been the gagging of the majority in this House....”<sup>52</sup> In another statement, Borden said, “No one is more ready than I to acknowledge that liberty of speech and freedom of debate must be preserved, but I venture respectfully to suggest that these privileges must be observed and maintained under such conditions that they shall not be allowed to degenerate into license and obstruction.”<sup>53</sup> The Conservatives were correct - the Liberals were obstructing parliamentary progress on the Naval Aid Bill. For months the Liberals had time to say what they wanted - if it was not already said then it could not have been that important. In a private letter to the Governor General, Prime Minister Borden gave some insight into why closure was needed. Borden wrote, “An Opposition in legislatures where no closure prevails can prevent the governmental machine from working. In such cases it is the duty of any Government to provide such improved machinery as will enable the business of the country to be carried on without undue or obstructive interruption.”<sup>54</sup> The Government needed to proceed, Britain needed

---

<sup>50</sup> Ibid.

<sup>51</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (9 April 1913), p. 7430 (Mr. Laurier, Leader of the Opposition).

<sup>52</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (22 April 1913), p. 8251 (Mr. Borden, Prime Minister).

<sup>53</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (9 April 1913), p. 7389 (Mr. Borden, Prime Minister).

<sup>54</sup> Library and Archives Canada. Robert Borden Fonds, R6113-2-3-E, Reel C-4202, Letter from Prime Minister Robert Borden to the Governor General, the Duke of Connaught, 15 February 1913, page 2228.

those ships and closure was applied for the first time in Canadian parliamentary history when the second reading of the Naval Aid Bill was brought to a conclusion.

### **Public Discussion on the Third Reading of the Naval Aid Bill**

After months of debates and countless members of parliament speaking in favour and against the Naval Aid Bill, it was time to vote on the third reading as closure concluded the precedent-setting House of Commons debate. On 15 May 1913, with a vote of one-hundred-and-one in favour to sixty-eight opposed, the Naval Aid Bill received its third reading.<sup>55</sup> However, a much larger public debate on this substantial piece of legislation continued outside the House of Commons. In the media, newspapers were "...sharply divided on party lines."<sup>56</sup> Some pro-Conservative newspapers like the *Montreal Gazette* stated that Prime Minister Borden's plan promised the "...greatest return in efficiency...."<sup>57</sup> The *Halifax Herald* was rather critical of the Liberal policy of Canadian ships when it was quoted, "...beyond dispute, Canadian ships kept around Canadian harbours and shores would be useless for defence purposes...."<sup>58</sup> Conservative newspapers concurred that there was indeed an emergency in Europe, ships needed to be constructed for the Royal Navy and the Naval Aid Bill must be approved. The Liberal press was equally passionate in favour of Laurier's policy on the expansion of the Royal Canadian Navy and against any emergency and contribution. The *Halifax Chronicle* stated that Borden's plan was "...poor and humiliating, substituting for a thoroughly Canadian policy...."<sup>59</sup> The *Manitoba Free Press* stated that there was no emergency and "...the Borden scheme (was) a proposition to meet our obligations of Empire defence by writing a cheque. It is an easy, lazy and unmanly way of meeting an obligation of manhood."<sup>60</sup> There was a complete lack of consensus within the media and throughout Canada where neither policy had greater support than the other. This was a challenge for the Senate which had to take into

---

<sup>55</sup> Dominion of Canada, *Journals of the House of Commons of the Dominion of Canada*, (1912-13), p. 604.

<sup>56</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 100.

<sup>57</sup> *Gazette*. "Liberals Decide on Obstruction." 4 April 1913.

<sup>58</sup> Hopkins, *The Canadian Annual Review of Public Affairs 1913*, 178; Quoting the *Halifax Herald*, 13 January 1913.

<sup>59</sup> Hopkins, *The Canadian Annual Review of Public Affairs 1912*, 73.

<sup>60</sup> *Manitoba Free Press*. "Cash or Men? Or Both?" 7 December 1912.

account not just the debate in the House of Commons but also the broad public debate that was equally divisive.

Very few public debates of the same magnitude as that surrounding the Naval Aid Bill, had occurred in Canada since Confederation in 1867. The debate was truly historic in scale. It is important not to forget that the Canadian Senate was a witness to this historic national debate, it was engaged in trying to understand the uncertain and divided public opinion of Canadians. The Senate either had to pass the Naval Aid Bill or block it. A monumental decision had to be made and the decision the Senate took proved to be historic.

### **The Naval Aid Bill in the Senate**

The time came for the Senate, which was intended and established to be the institution within Parliament that calmly and dispassionately evaluated proposed legislation, to take action on the Naval Aid Bill. Canadians focused on the upper chamber when the Naval Aid Bill was brought to and read for the first time in the Senate on 20 May 1913.<sup>61</sup> The debate on the Naval Aid Bill began when the leader of the government in the Senate, James Lougheed (Conservative – Alberta), introduced the bill with an eloquent and lengthy oration. Senator Lougheed expressed dire need for the thirty-five million dollar contribution as the Empire faced an emergency, and a contribution to assist the Royal Navy in the present crisis was needed urgently.<sup>62</sup> As the Royal Navy was the principal means of defence for the Empire, Senator Lougheed expressed great alarm for Britain and its colonies as he did not want to witness an “...armageddon of the sea....”<sup>63</sup> As Britain had the infrastructure in place for immediate ship construction, Senator Lougheed echoed Prime Minister Borden’s call that the construction of the Dreadnoughts would be in Britain and not Canada.<sup>64</sup> As Senator Lougheed’s introductory address continued, he did not provide the Senate with much new substance into the great Naval Aid debate, a consequence of the endless exchange that took place in the House of Commons.

---

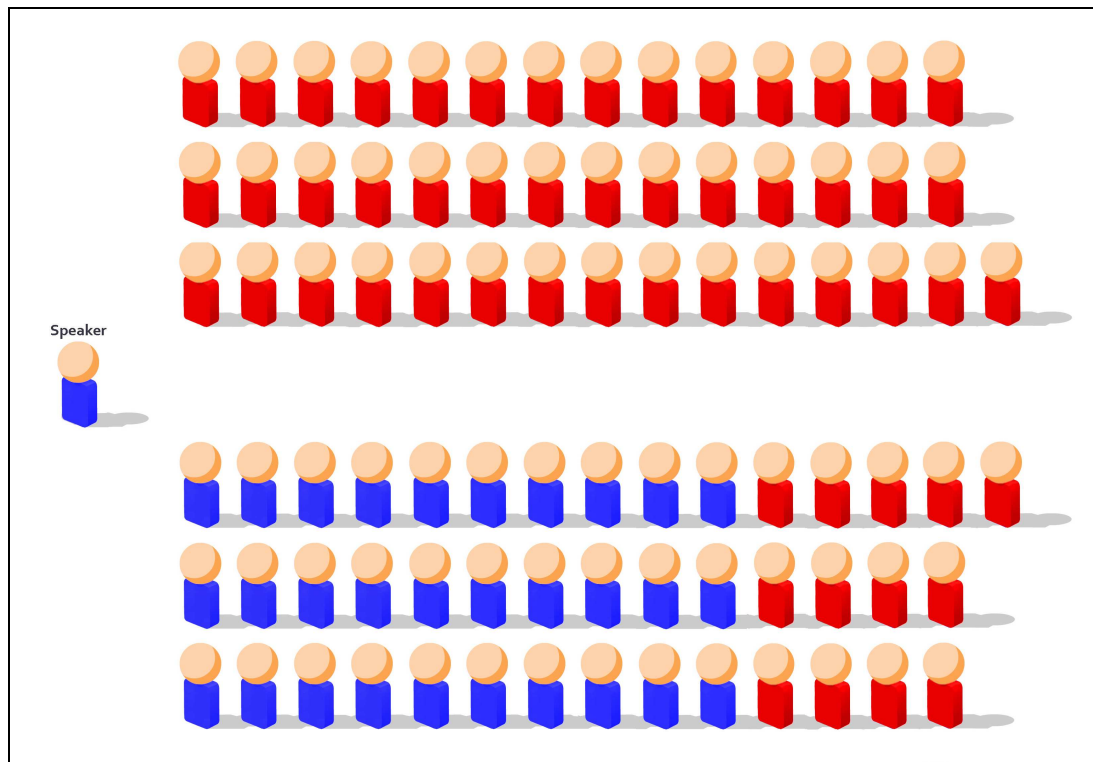
<sup>61</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, 1912-13, p. 459.

<sup>62</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, 1912-1913, (26 May 1913), p. 717 (Mr. Lougheed, Leader of the Government in the Senate).

<sup>63</sup> Ibid.

<sup>64</sup> Ibid., p. 718.

Diagram 4.1 – Political Party Allocation in the Senate in 1913<sup>65</sup>



The Senate in 1912-1913, with --- senators, thirty-one were Conservative senators (blue), while there were fifty-six Liberal senators (red).

### Debate Over Emergency

The Conservatives argued that an emergency existed and Canada needed to provide assistance immediately, without dissidence. As the debate persisted in the House of Commons for such an extended period, the ‘emergency’ argument used by the Conservatives in the lower chamber was essentially deflated by the Liberals and frustration was expressed by Senator Lougheed because the Liberals in both chambers of Parliament demanded unreasonable proof of the dire emergency that Britain faced. Senator Lougheed stated that the Liberals were being reckless as to the proof they required, Lougheed said, “This question of emergency is one with which it is somewhat difficult to deal, owing to the opponents of such a grant practically taking the position that this emergency should be demonstrated with mathematical

<sup>65</sup> Parliament of Canada. “Senators.”

<http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-57a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&PrimeMin> (Date created unknown, date last accessed on 31 August 2011).

exactitude.”<sup>66</sup> He continued, “To satisfy them that there is an emergency they would require rival fleets to be in the line of battle, they would want to hear the booming of the guns, the tearing noise of shot and shell, the swish of the torpedo, the crash of colliding ships and the agonized cry of the wounded. Nothing less than this would satisfy the carping critics of an emergency.”<sup>67</sup> The Conservatives had no sense of the point at which the Liberals might accept the perspective that Britain faced an actual emergency. Senator Mackenzie Bowell (Conservative – Ontario) provided assistance to Senator Loughheed in the emergency argument. Senator Bowell said: “The question of emergency has been talked about to such an extent that it is almost nauseating and to my mind the playing upon words has been beneath the dignity of those who have the slightest knowledge of the English language. The fact that England found it necessary to withdraw her forces from Canada and other portions of the Empire, and concentrate the whole power in the North Sea proves to the mind of everyone that there was an extraordinary emergency and they were concentrated where they might be required.”<sup>68</sup> Britain had retracted most of its naval force to the North Sea. Germany had rapidly increased its naval development; the Conservatives could not understand what other evidence the Liberals needed in order to convince them that Canadian assistance was required.

In their full right, being the opposition in Parliament, the Liberals were not convinced that Britain required assistance but rather wanted assistance. From the Liberals’ perspective, the Conservatives were overreacting to the situation. Senator George Ross, leader of the opposition in the Senate stated, “Britain unaided, alone, can cope with her enemies or with any combination of them.”<sup>69</sup> The Government still had not proved to Liberal satisfaction that a real, tangible emergency existed where Canada needed to provide assistance to Britain. Senator Napoléon Belcourt (Liberal – Ontario) stated much to Conservative agitation, “Had the Government shown the existence, or even the probability, nay, the possibility of such a danger, no one would

---

<sup>66</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, 1912-1913, (26 May 1913), p. 717 (Mr. Loughheed, Leader of the Government in the Senate).

<sup>67</sup> Ibid., p. 718.

<sup>68</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 909 (Mr. Bowell, Senator).

<sup>69</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 747 (Mr. Ross, Leader of the Opposition in the Senate).

object to giving aid to Great Britain, to the fullest extent....”<sup>70</sup> If Britain was in dire straits, the Liberals would not hesitate with providing assistance. However, as the emergency arguments progressed throughout the months in the House of Commons and days in the Senate, the Liberals felt that perhaps the Conservatives inflated the emergency claim out of proportion and when the Liberals questioned them on it there was simply no strength in the Conservative’s emergency argument.

### Canadian National Development

Many Conservative senators were adamant about strengthening the Royal Navy not further developing the Royal Canadian Navy. Senator Rufus Pope (Conservative – Quebec) said, “If a battle is ever fought in the North Sea or any other sea, we must have a fleet owned by Great Britain that will be so strong that after the smoke of battle clears away, there will be but one flag flying, and that will be the Union Jack of old England.”<sup>71</sup> The Conservatives did not want to have two navies, one Canadian and one British, but rather one united naval force controlled by Britain where Canada made contributions. It was not the time in Canada’s history to start constructing a naval force. Senator Joseph Bolduc (Conservative – Quebec) stated, “I believe that the building of that navy is premature today. It may be when Canada has a larger population, and our revenues have increased considerably that we will be in a position to build a navy of our own.”<sup>72</sup> Senator John Daniel (Conservative – New Brunswick) echoed Senator Bolduc statement when he said, “We have to remember that the time is still far distant when we, of our own resources and our own population, can so arrange defensive matters that we can defend our coasts against all comers by the enlistment of our own men, or by the creation of our own naval force.”<sup>73</sup> The Conservatives focused on what the Empire had and could do, rather than what Canada ought to develop and create. The Conservative argument was rather interesting, in that they argued on what they believed would be best for

---

<sup>70</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 814 (Mr. Belcourt, Senator).

<sup>71</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 814 (Mr. Pope, Senator).

<sup>72</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 765 (Mr. Bolduc, Senator).

<sup>73</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 832 (Mr. Daniel, Senator).

Canada which was to provide a financial contribution to the British Royal Navy as the Royal Canadian Navy was still immature. The senators were in the Senate to evaluate and legislate on what was best for Canada. The Conservative senators had a strong point in building up, the already established Royal Navy which would protect Canada, but their remained a fine balance for what would be best for Canada because the Liberal senators also had a strong point in building up the Royal Canadian Navy into something stronger and better.

The Liberals were flabbergasted by the remarks the Conservatives were making, to say that Canada was in a position that it could help Britain, but it could not help itself. Many Liberal senators stressed the need for national development and greater self-reliance. The Liberals argued national development was critical to all young nations, Canada included, and the thirty-five million dollar contribution to Britain would do nothing in the further development of the Canadian nation. Senator William Roche (Liberal – Nova Scotia) said, “Ships can be built in Canada too. We have to make a beginning. We will have to obtain more skilled labour and have better designers and by doing so we will have the advantage of building commercial ships. We can first build ordinary cruisers, and then fast cruisers, and then battleships and we can do it as well as any other country in the world.”<sup>74</sup> Senator Joseph Legris (Liberal – Quebec) stressed the point of focusing in on Canadian interests not imperial ones when he said, “In the sacred name of loyalty, Canada is asked to commit a crime of such magnitude as to lose sight of her own interests and at the same time endanger the peace for the future. No man or cabinet in these days should be permitted to bargain away the people’s right of deciding their own policy, and this Senate will do well if it takes care that principle of responsibility, won in the past at great cost, shall not be subverted by such legislation as this.”<sup>75</sup> Senator Legris argued the policy of providing thirty-five million dollars for the construction of three Dreadnought battleships for the Royal Navy was a policy which did not originate from Canada but rather from Britain and it would be a retrogressive act on Canadian national development if approved. Senator George Ross (Liberal – Ontario) rose to

---

<sup>74</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 769 (Mr. Roche, Senator).

<sup>75</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 870 (Mr. Legris, Senator).



the floor and reminded the Senate that Canada had made great strides in its national development since 1867 and by no means was Canada feeble or weak:

*“There is nothing to stop the chariot wheels of the sovereign people. This Senate will not stop them so far as I am concerned. (...) If the twentieth century is to see the full fruition of the labour of those who laid the foundation of our Dominion and planned the superstructure which should be the glory of the nations, every measure which affects its dignity or which represents its purpose should be proportioned to the ideals of its founders. I have great respect for the Fathers of Confederation; we do not think enough about them. The day of small things is past and gone. We are no longer infants in the night crying for the light. We are no longer walking timorously the path of destiny; our pulse beats stronger and our step is firmer, for the strength of young manhood is our lions.”*<sup>76</sup>

For the Liberals, Canada had developed into a proud nation of individuals from sea to sea and the Canadian Parliament should focus on that pride and strengthen the Canadian institutions throughout the country, including the Royal Canadian Navy. The proposed legislation, according to Senator Joseph Legris (Liberal – Quebec), “...(did) not in any way help to put our country in a position to defend herself.”<sup>77</sup> Could Canada defend itself against an attack without the assistance of Britain during this time? No, Canada only created its Navy in 1910 and it needed further development in naval infrastructure and training its naval officers. Canada needed to focus on its own development and maturity, Britain could manage, and there comes a point in every nation’s development where its people have to take responsibility for itself, and not rely on foreign assistance. The Liberal senators argued for Canadian self-security rather than dependent-security. Senator William Edwards (Liberal – Ontario) said, “On many occasions statesmen of Great Britain expressed the opinion that the time might soon come when Canada would be expected to paddle her own canoe.”<sup>78</sup>

### Canada’s Autonomy from Britain

One of the principle aspects that surrounded the Naval Aid Bill which many senators had issue with was the impression of British interference within an arena of Canadian internal policy as this would be unconstitutional according to the *British*

---

<sup>76</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 758 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>77</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 870 (Mr. Legris, Senator).

<sup>78</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 886 (Mr. Edwards, Senator).

*North America Act* in Section 91(7). The Liberal Leader of the Opposition led off the arguments against the infringement on Canadian rights when he said, “I ask my honourable friend [Senator James Loughheed] is he going to take the responsibility of surrendering part of the authority conferred upon the Parliament of Canada by the *British North America Act*? We are giving over part of that authority when we agree to make conditions with His Majesty’s government as to how this money shall be paid, used and applied. (...) What we have we hold. What we have we cannot part with. It is ours to use, not to dispose of.”<sup>79</sup> Senator Ross was referring to Section 91(7) of the *British North America Act* stated the Canadian Parliament has full, exclusive authority and administration on all matters extending to the militia, military and naval service and defence.<sup>80</sup> The constitutionality of the Naval Aid Bill might be challenged if the Canadian Parliament assented to the bill. Senator Ross continued, “I say we have two constitutional anomalies or defects in the Navy Bill. One, that Canada, beyond her right to do so is surrendering part of her power, and the other, that the British government is getting power which she has no right to.”<sup>81</sup> Henceforth, the Naval Aid Bill was, “...an interference with our constitutional rights under the *British North America Act*.”<sup>82</sup> Senator Napoléon Belcourt (Liberal – Ontario) was very blunt, brash and forthright as he said, “I believe this measure, if passed, would be unconstitutional, unnecessary, useless, without authority or mandate, most likely to cause friction – fraught with danger to the imperial tie, a positive menace to empire unity, inconsistent with the aspirations and ambitions of Canada.”<sup>83</sup>

### The Question of a Popular Mandate

There was a larger issue with the Naval Aid Bill, the issue of justification. Many senators argued that no justification existed where the Senate could approve the bill. Senator Napoléon Belcourt (Liberal – Ontario) mentioned the fact that the

---

<sup>79</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 748 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>80</sup> Please refer to Appendix E for the full except of the Section.

<sup>81</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 748 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>82</sup> Ibid.

<sup>83</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 827 (Mr. Belcourt, Senator).

Borden Government never received a mandate nor approval from the people of Canada to provide such a precedent-setting contribution to the British Government at the last federal election. Senator Belcourt said, “The only question before the people in the elections of 1911 was the establishment of a Canadian naval service. There was no discussion, no talk, no hint even, of a contribution. (...) The present contribution is, in consequence, not only unauthorized under the constitution; it is against the wishes of the people who have never pronounced themselves on the question of a contribution...it is not now justified or supported by public opinion.”<sup>84</sup> This was where the debate in the Senate accelerated for the Liberal opposition, in that the governing Conservatives never received any mandate from the Canadian people to proceed with the thirty-five million dollar contribution.

The Liberal opposition in the Senate opposed the multi-million dollar contribution, and they knew they had the clear majority in the Senate where they could effortlessly block the proposed contribution. However, it has been said, the Senate never went against the will of the people. The Senate lacked clarity on where the majority of Canadians stood on the issue, since the proposal for naval aid was never an issue during the last federal election. The Senate was intended to slow the passage of legislation and provide a second thought on it, if the Senate had doubt in the proposed bill; the senators were to use their constitutional power to block the passage. The Liberal senators’ final argument was two-fold. First Liberal senators argued the naval aid debate was epic in scope. The length of debate that took place in the House of Commons broke parliamentary records. The copious newspaper articles that were written throughout the nation reflected how one profound issue had captivated the entire country into focusing people’s attention on future relations with Britain. Moreover, Liberal senators had lack clarity on where the majority of Canadians stood on the issue. As a result, many Liberal senators, like George Ross, favoured a plebiscite. “...I have this concern, that I do sincerely hope that any legislation we may approve of in this House is in harmony with public opinion whether that public opinion is represented in the other House by a Liberal or Conservative government. (...) The moment a bill comes before us in regard to which public opinion is uncertain, or in regard to which there has been no expression

---

<sup>84</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 823 (Mr. Belcourt, Senator).

of it, then I think we are justified in trying to find what that public opinion is.”<sup>85</sup>

Senator Henry Cloran (Liberal – Quebec) was more direct as he said:

*“We are asking the country to pass upon an issue which has never been submitted to the people, to pass upon a principle which underlies the very foundation of our national life, and upon which the people of Canada have had no opportunity in the past to express themselves. (...) We have had this (debate) for the last five months, and for what – all in the main part for self glorification, self-adulation and self-sufficiency. Canada was going to save the empire by handing over to the treasury of Great Britain \$35,000,000 of the money of the wage-earners of this country, an absurd proposition! Why, honourable gentlemen, if you only knew the sentiments of the people, if you would only keep in touch with the will and the needs of the people, you would know that throughout Canada today this bill is an object of derision and contempt.”*<sup>86</sup>

The Liberals stressed the importance of this monumental issue as it ought to be brought to the Canadian public for their decision. Senator Joseph Legris (Liberal – Quebec) urged for a national plebiscite, “Now I wish to repeat that the question is so grave that it cannot be imposed on the people without submitting it to the electors by means of a referendum rather than a general election, for in a general election no question can be judged independently from several other issues.”<sup>87</sup> Senator George Ross concurred with his Liberal colleague as he said, “...let the people of Canada say whether they believe in a permanent navy or in a contribution. If they want this contribution they shall have it, so far as I am concerned, should I have a seat in the Senate.”<sup>88</sup> The Senate would not go against the expressed will of the people of Canada, so bring the issue to them in the form of a national plebiscite, and the Senate shall proceed in a manner that is in accordance to the expressed majority of Canadians.

### Blockage of the Naval Aid Bill

Time concluded on the debate of the Naval Aid Bill in the Senate and an important conclusion was reached. Since the Liberals were in majority, there was a strong sense that rejection was eminent. Senator George Ross (Liberal – Ontario)

---

<sup>85</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 756-757 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>86</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 870 (Mr. Cloran, Senator).

<sup>87</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 868 (Mr. Legris, Senator).

<sup>88</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 757 (Mr. Ross, Leader of the Opposition in the Senate).

articulated Canada nation concerns when he said, “To reject it means nothing to the Empire, but to reject it means a great deal to Canada. Sentiment, construction of a navy at home, employment of our skilled workmen, the inspiration of doing something for ourselves instead of hiring somebody else to do it.”<sup>89</sup> The Conservatives fearing inevitable rejection cautioned the Liberal majority with a reminder as to when the Senate should reject proposed legislation. Senator William Ross (Conservative – Nova Scotia) said, “We are a court of review, and the question for us here is not whether this bill is the best possible bill, but whether the bill is so bad that it would be a public menace, that it would be irrevocable and so disastrous for the public interest that we should stop it at all hazards.”<sup>90</sup> How could the Canadian upper chamber know if this bill was a public menace when there was such a division in public opinion and the lower chamber had to introduce parliamentary procedural rules to advance the bill?<sup>91</sup> Senator Hewitt Bostock (Liberal – British Columbia) said, “This bill has been discussed in the House of Commons for a great length of time; there has been a great difference of opinion over the matter, and the government, instead of consulting the people on a question of this kind, where there was very divided opinion as to what was the best thing to do, went so far as to introduce rules into the House that would enable them to put this legislation through the House without reference to the people....”<sup>92</sup> Other Liberal senators felt the only action that ought be taken was blockage as the public was ignored. Senator Joseph Legris (Liberal – Quebec) said, “Now, since the government has completely ignored...the feeling of the people, I think it only right that this Senate should accomplish the best act of its existence by repudiating, under such circumstances, the bill now before us.”<sup>93</sup>

The Conservatives were shocked with the Liberal claims that the people were ignored and argued that it would be preposterous if the Senate rejected the Naval Aid Bill on these grounds because the Senate is the appointed body while the House of

---

<sup>89</sup> Ibid.

<sup>90</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (27 May 1913), p. 777 (Mr. Ross, Senator).

<sup>91</sup> The reference is to the use of closure in the House of Commons.

<sup>92</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 802 (Mr. Bostock, Senator).

<sup>93</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 864 (Mr. Legris, Senator).

Commons is the chamber that houses the elected representatives of the people of Canada. Senator George Gordon (Conservative – Ontario) said, “The Senate is taking upon itself a responsibility which is not warranted in any shape or form. They are turning down the House of Commons who are the proper representatives of the people, and thwarting the will of the people of Canada, and I thoroughly believe that if tomorrow, or the day after, the Senate reject this bill the people of the Dominion of Canada had any chance of abolishing the Senate they would do so.”<sup>94</sup> This is rather remarkable as the Liberals counted back at that claim and reminded the Senate why the Canadian Senate was established in 1867 and what its function was. Senator William Edwards (Liberal – Ontario) stood in the Senate and said: “As I understand the situation, it is the function of this House to consider the various propositions that come before us, and it is the function of this House, in the interests of the people of this country, to correct where corrections are necessary, and to change when they find changes should be made in any of the bills which come before us. Certain honourable gentlemen seem to think that the function of the Senate is simply to say yes to everything and anything which the other chamber proposes. If such is true, then this House should be dispensed with.”<sup>95</sup> The Senate was never intended to be a rubber stamp of approval for the House of Commons just because the House of Commons was the elected chamber. From time to time the Senate will block particular pieces of legislation approved in the House of Commons when the senators judged that to be the warranted response and there would be no use of the upper chamber if it did not perform that function set out for it by the Fathers of Confederation. In evaluating the Naval Aid Bill, the Liberals then proposed an amendment which read, “That this House is not justified in giving its assent to this bill until it is submitted to the judgement of the country.”<sup>96</sup> The approval of this amendment inevitably blocked the passage of the bill in the Senate.

### The Vote Outcome

---

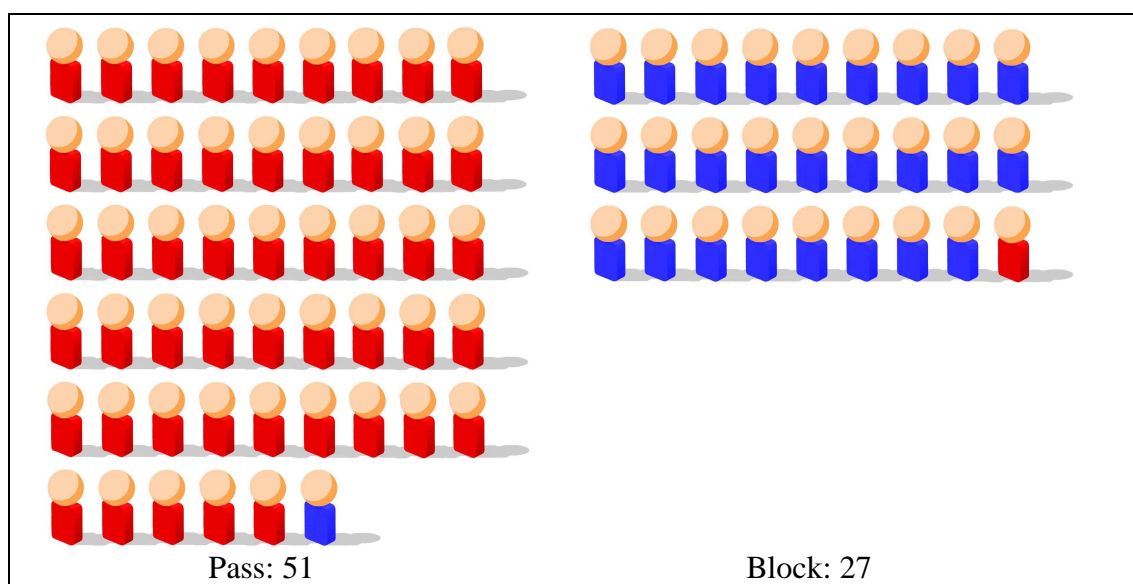
<sup>94</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (28 May 1913), p. 846 (Mr. Gordon, Senator).

<sup>95</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 885 (Mr. Edwards, Senator).

<sup>96</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (29 May 1913), p. 858.

The Senate's vote on the proposed amendment was remarkable. On 29 May 1913, the Senate voted fifty-one in favour of the amendment and twenty-seven opposed.<sup>97</sup> The Canadian Senate voted and blocked the passage of the Naval Aid Bill. There was clear and irrefutable political partisanship in the vote as virtually every Liberal senator voted for the amendment and virtually every Conservative senator voted against the amendment. The debate on the Naval Aid Bill did not last long in the Senate as there was not much new material available to mention which had not been considered in the debate in the House of Commons.

Diagram 4.2 – The Senate vote regarding the Naval Aid Bill<sup>98</sup>



The Naval Aid Bill vote, there were 78 senators present for the vote. 50 Liberal senators (red) and 1 Conservative senator (blue) voted in favour of the amendment, while 26 Conservative senators and 1 Liberal senator voted against the amendment.

### Partisan Voting

It is clear that the Liberal senators voted in a pronounced partisan form, so much so that it is incontrovertible. The clear partisan action by the Liberal majority immediately drew public speculation and conclusion that those senators did not legislate as members of Canada's upper chamber which was intended to be a thoroughly independent chamber, that legislates over proposed legislation free from outside influence. It would have been a remarkable coincidence for such a large group of senators belonging to the same political party to have the same vote

<sup>97</sup> Ibid.

<sup>98</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada* (1912-13), p. 517.

outcome on such a heavily contentious issue that captivated the nation. It was no coincidence at all but rather the political manoeuvring of Wilfrid Laurier and his imposition of party discipline upon the Liberal senators. Rumours began by 22 May 1913 that Laurier was personally influencing the Senate, although he denied this in the House of Commons.<sup>99</sup> Although Laurier may have officially denied it on the floor of the House of Commons – outside the Commons is different territory and when confronted with the charge of trying to influence the independent upper chamber, “...he virtually pleaded guilty.”<sup>100</sup>

Wilfrid Laurier gave an ultimatum to his fellow Liberal members of the Senate to either block the Naval Aid Bill or face his resignation as leader of the Liberal Party of Canada. The *Montreal Gazette* reported, “...Laurier had flatly told the Liberal leaders in the Senate that if they did not kill the Naval Bill he would at once resign the Liberal leadership in the House of Commons.”<sup>101</sup> This was surely a blow to the Liberal senators as this was “the Wilfrid Laurier,” the grand statesman, one of the first great prime ministers of Canada who led the Liberals through many successful elections to political office. For if he resigned, who would lead against Robert Borden and the Conservatives? The choice was clear for the Liberal senators – they had to block the bill.

The greater independence of the upper chamber had been broken. Prime Minister Borden said, “Many of the Liberal Senators voted against their conscience and their judgement and at the dictation of Sir Wilfrid Laurier who gave them the choice between the defeat of the bill and his resignation.”<sup>102</sup> The threat of Laurier’s resignation was too high of a cost for the Liberal majority in the Senate to vote according to their own individual assessment on, and the potential passage of, the Naval Aid Bill. An individual’s decision making will always be influenced by outside factors if the consequences of their decision are high enough. Although some Liberal senators may have personally concluded that passage was warranted on the

---

<sup>99</sup> Hopkins, *The Canadian Annual Review of Public Affairs* 1913, 168.

<sup>100</sup> See Robert MacGregor Dawson. *The Principle of Official Independence* (Toronto: S.B. Gundy, 1922), 249.

<sup>101</sup> See *Gazette*. “Laurier Issues An Ultimatum.” 26 May 1913.

<sup>102</sup> Library and Archives Canada. Robert Borden Fonds, R6113-2-3-E, Reel C-4201, Letter from Prime Minister Robert Borden to the Governor General, the Duke of Connaught, 10 June 1913, page 2031.



Naval Aid Bill, the threat of Laurier's resignation was enough to influence virtually every Liberal senator ultimately to block the bill.

### **A Failed Independent Sober Second Thought**

The intention for the Senate to be a thoroughly independent chamber of sober second thought was not fulfilled with the blocked Naval Aid Bill. The Senate was not entirely free of party constraints and the senators demonstrated a lack of independence with the clear demonstration of partisan voting. Perhaps the Naval Aid Bill polarized the two political parties to such a degree that nothing less could be expected. A middle ground could not have been achieved. The Liberals were the recipients of the greatest blame. The *Montreal Gazette*, a Conservative newspaper remarked rather bluntly and emphatically, "The line of action followed by the majority was not a courageous one nor a wise one, not one calculated to raise the Senate in the estimation of the people. (...) In voting for the (amendment) the majority shirked its duty, made itself the tool of the Liberal party managers in the House of Commons, and played the smallest kind of politics."<sup>103</sup> However, for every charge that the Liberals received concerning partisanship – the Conservatives were equally guilty. If the Conservative senators were any less partisan there would have been a greater distribution of Conservative votes during the amendment, but there was not. The Conservatives blamed the Liberals for outside interference, but to have the Conservatives vote as they did, the Liberals could cry hypocrisy. This leads to the larger problem of Senate independence from outside influences.

Senate independence was a major concern for the Fathers of Confederation. The Fathers of Confederation had intended that senators would have a measure of independence from outside interference, interference such as threats by their local constituents to remove them from political office at the next election if they voted certain ways. The senators are appointed and thus did not fear or have to be concerned with losing their seats. The Fathers of Confederation were successful in achieving this, but this is independence from the people. However, as Robert Dawson has argued, "An examination of the history of the Senate, however, shows that while it was the aim of the founders of the Dominion to secure the personal

---

<sup>103</sup> *Gazette*. "The Naval Aid Bill." 31 May 1913.

independence of its members, that aim has never been secured.”<sup>104</sup> Wilfrid Laurier and Robert Borden were two dynamic leaders who commanded great respect among their peers, so much so as to influence and shaped the formal lawmaking decisions in the Senate. Dawson has argued, the Canadian Senate, “...is independent of the people certainly, and that does not appear to be much in its favour; but, as for independence in the higher sense of impartiality or freedom from party prejudices and predilections, it can lay no claim to the slightest infusion of it.”<sup>105</sup> The life appointment of each senator was intended to achieve greater independence, but just because the ability to be independent is there – it does not mean they will be. The intention for the Senate to be an independent upper chamber which evaluated proposed legislation was not fulfilled while proceeding over the Naval Aid Bill.

### Fiscal Responsibility and National Development

The Borden Government in a hasty manoeuvre introduced the Naval Aid Bill under the pretence of a dire emergency which would have contributed millions of dollars to the Royal Navy while ignoring Canadian development and national defence advancement. The Senate recognized this and the bill was blocked from passage. National development is vital to all new and developing nations and at some point that nation must stand up for itself. Before this can occur, the government must institute a series of programs to increase the country’s development and its autonomy from other states. A contentious issue develops when two political parties have very contrasting and opposing views on national development and autonomy, as witnessed with the Naval Aid Bill. For, as D.G. Creighton noted, the Conservatives, “...(they) saw Canadian defence within the context of imperial defence; and for (them) the Canadian navy was essentially a fleet unit within the world-wide organization of the imperial navy.”<sup>106</sup> By contrast, he explained how the Liberals felt that “...Canadian national autonomy and Canadian national dignity required a Canadian naval service.”<sup>107</sup> The Liberals wanted Canada’s own individual navy allied with Britain, not a Canadian fleet within the Royal Navy. Additionally, by providing a large fiscal

---

<sup>104</sup> Dawson, *The Principle of Official Independence*, 240.

<sup>105</sup> *Ibid.*, 251.

<sup>106</sup> D.G. Creighton, *Canada’s First Century, 1867-1967* (Toronto: Macmillan of Canada, 1970), 117.

<sup>107</sup> *Ibid.*

contribution to the Royal Navy, Canada would have established a precedent of reoccurring contributions which would have been a grave retrogressive move and contrary to Canadian national development. In a private letter from Senator George Ross to Senator James Lougheed, Ross wrote that the passage of the Naval Aid Bill would invite "...Canadians to lean upon the Imperial Government for defence instead of providing for their own defence. As Marc Milner noted, this is not the way to make a strong nation and is contrary to all the processes of development which have characterized Canada since Confederation."<sup>108</sup> Secondly, a developing nation should allocate greater fiscal resources to new and emerging industries within their nation and Canada was no exception. Canada could not build the Dreadnoughts as Canadian shipbuilding had not advanced and developed to an extent where it could. This came to the forefront of Canadian politics and the Conservatives decided to funnel the money into the British Royal Navy as it "...was the most cost-effective way to go."<sup>109</sup> I would argue that this was a band-aid solution as it was the easiest thing to do, but not the right thing to do. A fiscal contribution to the British Royal Navy was nonetheless a lower cost option, yet it had a lower reward, compared to a fiscal underpinning for the development of the Royal Canadian Navy which would have a higher cost but, potentially yield a greater reward. If the money was allocated to the Royal Canadian Navy and related industries, Canada would have witnessed greater national development, economic development, industrial development and regional development, all of which were important elements towards achieving greater national autonomy for Canada. The Senate followed one of the intentions of the Fathers of Confederation by blocking a fiscally imprudent use of Canadian taxpayer's money.

### Opinion of the People Too Divided

The Senate was intended to legislate and pass bills which resulted in the greatest advancement of the Canadian nation; this was not always the most popular thing to do. A small minority of individuals were indeed displeased with the Senate's

---

<sup>108</sup> Library and Archives Canada. Robert Borden Fonds, R6113-2-3-E, Reel C-4349, Letter from Leader of the Opposition in the Senate to the Leader of the Government in the Senate, 29 April 1913, page 67678.

<sup>109</sup> Marc Milner, *Canada's Navy: The First Century* (Toronto: University of Toronto Press, 1999), 26.

action on the Naval Aid Bill, calling the senators a group of “...fossilized old gentlemen.”<sup>110</sup> A clear majority of one opinion or the other in the Canadian public concerning the Naval Aid Bill did not exist; people’s opinions were too hopelessly divided for the Senate to approve the bill.<sup>111</sup> With good reason the Senate did not pass the Naval Aid Bill because, as MacKay has argued, the Senate, “...has never defeated the real will of the people or obstructed it when that will was clearly expressed.”<sup>112</sup> If the opinions of the people were clear, then the Senate would not have approved the amendment requesting the bill be brought to the people for a public decision in a form of a referendum or plebiscite. George Ross has stated what is clear is that, “On no occasion has the Senate been overruled by the electors, although it has often overruled the opinion of the House of Commons.”<sup>113</sup> More specifically, the Senate was not so much of a check upon the House of Commons but rather a check upon the Cabinet, “...and there can be no doubt that its influence in this respect is salutary.”<sup>114</sup> However a reason why it was so was because the opposing party was in majority in the Senate and if the Conservatives were also in the majority, the bill might have passed. The Naval Aid Bill did not pass and the Senate was a successful check upon the Cabinet, partially due to the powers it was granted by the *British North America Act*, as it was a productive check upon the proposed legislation in Canada’s bicameral parliament. More so, as the *Morning Chronicle* mentioned, the Borden Government had no mandate for the naval aid contribution and was only successful in passing the bill through the House of Commons, “...by a resort of brute force, and after a parliamentary deadlock....”<sup>115</sup> As the Government forced the bill through Parliament with the nation’s opinion lacking clarity and focus, the Senate demanded it be brought to the forefront of the Canadian people for they are the ultimate deciders, whatever their decision may end up being.

---

<sup>110</sup> See *Gazette*. “Does Not Take Senate Seriously.” 31 May 1913.

<sup>111</sup> See MacKay, *The Unreformed Senate of Canada* (1926), 126.

<sup>112</sup> MacKay, *The Unreformed Senate of Canada* (1967), 111.

<sup>113</sup> George Ross, *The Senate of Canada: Its Constitution, Powers and Duties Historically Considered* (Toronto: The Copp Clark Company Limited, 1914), 82.

<sup>114</sup> Clifford Sifton, “The Foundations of the New Era.” in *The New Era in Canada*, ed. J.O. Miller (Toronto: J.M. Dent and Sons Ltd, 1917), 50.

<sup>115</sup> *Morning Chronicle*. “Did Its Duty.” 31 May 1913. (Halifax, Nova Scotia).

## Failed Success

The Senate's legislative actions over the Naval Aid Bill can be considered a failed success. It was a failure in that the final decision was heavily influenced by the two leaders in the House of Commons thus lacking independence; however it was nonetheless a success in blocking a bill which would have been a retrogressive step in Canadian national development. As the *Morning Chronicle* argued, "The Senate (had) done its plain duty. It (had) rendered a service which would more than justify its continued existence...."<sup>116</sup> More so, "...the Senate was established to pass upon and provide a check to hasty legislation by the Commons – such legislation as the Borden Naval Bill."<sup>117</sup> For the Senate to fulfill all the original intentions perhaps might be too large of an expectation for it to follow. Nations develop and situations change that could not be anticipated from the Fathers of Confederation, one where the leader of the opposition in the House of Commons threatens to resign if the Senate did not do as requested, but a nation can grow, further develop and mature from those unique situations into possible reform to prevent such future action. In the case of the Naval Aid Bill, "...the Senate was justified in suspending the bill until the people had more clearly expressed their will. Moreover, history would seem to be on the side of the Senate rather than on that of the Government. The whole trend of political development in Canada for the preceding three-quarters of the century had been towards autonomy, and, in the Empire, towards decentralization."<sup>118</sup> One of the direct national benefits of the Senate's rejection of the Naval Aid Bill was that it was one in a series of critical events that helped acquire greater Canadian independence from Britain. A number of years after the Senate's blockage, Robert Borden gave a lecture on Canadian constitutional development at the University of Toronto. Borden said between 1911 and 1914, "Canada's right to a voice in foreign policy involving her interests as a great Dominion of the Empire, began to be recognized. Her complete control over her policy in respect of military and naval defence was acknowledged. By these sure steps, Canada was steadily mounting to the stately

---

<sup>116</sup> *Morning Chronicle*. "Safe and Saving." 4 June 1913.

<sup>117</sup> *Morning Chronicle*. "Unholy Alliance." 2 June 1913.

<sup>118</sup> See MacKay, *The Unreformed Senate of Canada* (1926), 127.

portal of nationhood.”<sup>119</sup> The Senate’s blockage was viewed harshly by some individuals but as time progressed, greater hindsight and clarity were established to conclude that the Senate’s actions were beneficial. Perhaps the clear adherence to the intentions of the Fathers of Confederation was not vital, particularly when the Senate clearly lost its critical independence, but if the ultimate outcome is advantageous to the nation, I would argue, diversion then could be tolerated.

## **Conclusion**

The debate surrounding the Naval Aid Bill endured months of speeches in the House of Commons with countless pages of arguments both for and against the legislation. The Conservatives argued that Britain faced an emergency situation which Canada, second only to Britain in the Empire, should contribute thirty-five million dollars for the construction of three Dreadnought battleships for the British Royal Navy. Britain had helped Canada in the past, for it was then time to return the favour. The money would not be allocated towards the Royal Canadian Navy, as Prime Minister Borden felt that one navy was stronger together than two. The Liberals argued that the emergency Britain faced was only a perceived emergency, if Britain was in grave danger, it would have requested a great deal more from Canada in assistance. Secondly, the Liberals argued that if this bill was passed it would be a retrogressive step in Canadian development. Ever since Confederation occurred in 1867, Canada was on a path of national development and obtaining greater self-reliance. The debate surrounding the Naval Aid Bill was a dynamic debate, it was not just about a thirty-five million dollar contribution, it was a debate about Canadian national development.

The Naval Aid Bill was a rather controversial piece of Canadian legislation from the moment it was introduced. There were months of filibustering by the opposition which cried foul when they felt their right to free speech was taken away as the bill was forced through the House of Commons with the adoption of closure. The Senate ultimately blocked the Naval Aid Bill from passage, as it felt that it was fiscally imprudent for thirty-five million dollars to leave Canada, for the money

---

<sup>119</sup> Robert Borden, “Constitutional Development from Confederation to the World War.” (The Marfleet Lectures, University of Toronto, in *Canadian Constitutional Studies*. Toronto: University of Toronto, 1921). 94.

should stay within Canada for national development. Additionally, the Senate deemed there was neither justification for it nor enough public support to pass it. The Senate's final decision was to demand the Naval Aid Bill be brought to the Canadian public, as there should be a general vote on it because the public's opinion was too divided on the issue that the Senate lacked clarity on how they stood toward such a divisive and controversial piece of legislation.

The Canadian Senate's parliamentary performance with respect to the Naval Aid Bill is concluded as a failed success, in accordance to the intentions of the Fathers of Confederation and the framers of the Constitution. It was a failed success for two main reasons. First the Fathers of Confederation strived for an upper chamber that would evaluate and legislate with a heightened level of independence. However, the Senate failed in this as there was such obvious political partisanship from both political parties, and particularly from Wilfrid Laurier who threatened resignation if the Liberal majority did not concurrently vote one specific way. The Senate's independence was unfortunately breached by a unique situation where the consequence of the Senate's action or inaction was dictated by the potential resignation of an individual completely outside and independent of the upper chamber. The Fathers of Confederation failed to foresee such political party manoeuvrings as a potential threat to the independence of the Canadian upper chamber.

However, at the same time the Senate's parliamentary performance was a success because it demonstrated great concern for fiscal responsibility as it blocked the immediate departure of thirty-five million dollars from Canada, as this was not a prudent use of Canadian taxpayers' dollars. Additionally, the Senate's performance was a success as it blocked the Naval Aid Bill which had potentially precedent setting retrogressive policies towards Canadian national development, Canadian economic development, Canadian industrial development, Canadian regional development and Canadian national defence, all fundamental elements towards achieving greater national autonomy for Canada.

## **Chapter Five: The Old Age Pension Bill**



## **Introduction**

In 1926 the Canadian Senate blocked the Old Age Pension Bill which was an important piece of social welfare legislation introduced into the Canadian Parliament. Even though the Senate blocked its passage, its introduction was a significant moment in Canadian welfare policy as the legislative proposal signalled a change in thinking about social welfare in Canada. The Senate found the principle of the legislation admirable in granting pensions to the elderly in Canada. However, the Senate blocked the Old Age Pension Bill as it was legislation that entered into the sphere of provincial rights and obligations, such as the welfare of the population, which conflicted with Section 92 of the *British North America Act*. If passed it could have created a potentially conflict-generating precedent between the federal government and the provinces. The Senate also believed the legislation had passed through the House of Commons in haste where careful consideration was required but not given. Unlike the previous blocked bill, the Old Age Pension Bill focused on a Canadian domestic issue that encompassed the social welfare of the nation and brought out the dynamics of jurisdictional invasions which has been a feature of political and legal debate in Canada since Confederation.

## **History of the Old Age Pension Bill**

The political landscape in Ottawa in the mid-1920s was unlike anything in previous Canadian political history. The 1925 federal election saw the Liberal party return to their minority government status in the House of Commons with the Conservatives in opposition. However, the Liberals obtained 39.8 percent of the vote and 99 seats in the 245 seat House of Commons, while the Conservatives received 116 seats with 46.5 percent of the popular vote.<sup>1</sup> The Liberals were propped up into governing Canada, much to the displeasure of the Conservatives because of the remaining parties seated in the House of Commons, being the Progressives and Labour, provided Mackenzie King and the Liberals support.<sup>2</sup> Progressive support was easily obtained but support was critically needed from the two Labour members in particular as the two members provided Mackenzie King's government the

---

<sup>1</sup> See Kenneth Bryden, *Old Age Pensions and Policy-Making in Canada*. (Montreal: McGill-Queen's University Press, 1974), 68.

<sup>2</sup> Ibid.

majority in the House of Commons.<sup>3</sup> “King’s sole motive was to cling to power.”<sup>4</sup> The Labour members wanted some social welfare legislation introduced, pensions for the old aged in particular.<sup>5</sup> The Prime Minister agreed that his government would draft and introduce a measure providing old age pensions for Canadians.

By 1926 the political landscape had altered in the Senate from consisting of a majority of Liberal senators to a majority of Conservative senators. With the introduction of the Old Age Pension Bill, the senators took great interest as the bill required an equal partnership with the provinces. The Senate, in part, was established to articulate and express Canada’s regional and provincial concerns in the upper chamber in Parliament and this bill provided the perfect opportunity to assess the Senate’s ability to do so. From the outset of Parliamentary debate, senators were concerned that the bill had not been mentioned in the election campaign, or in the Speech from the Throne. Moreover, as the bill could only be implemented in partnership with the provinces, senators were concerned that the Government was seeking to pass the bill without having consulted with provincial governments. Of key concern to the Senate was *ultra vires* or the infringement of rights by the federal government into an area of provincial jurisdiction.

Providing pensions for the old aged was not a new topic in the Canadian Parliament, it had been discussed in some form in previous years. As Kenneth Bryden noted, in the 1920s old age pensions were “...unquestionably the social security issue...[as] poverty among the aged was acute, widespread and chronic...(and) old age pensions, as least those of the non-contributory variety were thought to be relatively simply to institute.”<sup>6</sup> The emergence of a Canadian welfare state was trying to gain a foothold within the nation. Indeed, the *Globe* argued that as more and more people aged without any means of self-support, a general acceptance had developed in “...principle that an obligation rests somewhere to care for those approaching advanced years without adequate funds....”<sup>7</sup> A special committee of the House of Commons was appointed in 1924 to inquire about a system of old age

---

<sup>3</sup> The Canadian Labour Party was a political party that had marginal success primarily in Western Canada between 1917 to 1929. The party focused on social and labour issues.

<sup>4</sup> Bryden, *Old Age Pensions and Policy-Making in Canada*, 69.

<sup>5</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 104-105.

<sup>6</sup> Bryden, *Old Age Pensions and Policy-Making in Canada*, 75-76.

<sup>7</sup> *Globe*, “Old-Age Pensions Elsewhere,” 2 February 1926. (Toronto, Ontario).

pensions in Canada.<sup>8</sup> This committee made a number of recommendations including that if an individual be of seventy years of age, they ought to receive twenty dollars per month, and that the scheme be based on the federal government providing fifty percent of the cost while the provinces providing the other half.<sup>9</sup> These recommendations formed the foundation of the 1926 Old Age Pension Bill. The dilemma lay in the details as to whose responsibility and obligation it was of the care for old-age individuals.

The Old Age Pension Bill was a fairly simple piece of legislation introduced into Parliament. Based on the recommendations of the special committee two years earlier, the bill entitled eligible Canadians to a pension of twenty dollars per month. The bill also listed certain requirements for eligibility, such as an individual had to be seventy years of age and certain residency restrictions applied. There were approximately 98,840 people in Canada who were eligible.<sup>10</sup> In 1926, this equated to about one percent of the Canadian population.<sup>11</sup> An individual would receive twenty dollars per month with the federal government paying half and the provinces paying the other.<sup>12</sup> This equated to a cost of \$11,860,000 for each government per annum.<sup>13</sup> The federal government saw it as an ingenious plan that allowed for federal government initiative while trying to respect provincial responsibility because the federal government would offer financial assistance to each province with the implantation of a provincially-administered plan.<sup>14</sup>

There were two significant problems with this bill. First, as the *Globe* argued, "There (was) little evidence of favourable response from the provinces to the federal suggestion of the provincial partnership and administration."<sup>15</sup> Second, as the *Gazette* noted, "The Government was not sure that it had the authority to do this."<sup>16</sup>

---

<sup>8</sup> See Canada. Department of Labour. *Old Age Pension Systems Existing in Various Countries*. (Ottawa: F.A. Acland, 1926), 3.

<sup>9</sup> Ibid.

<sup>10</sup> *Globe*, "100,000 are Eligible for Old-Age Pension, is Ottawa Estimate," 27 March 1926.

<sup>11</sup> *Globe*, "Old Age Pensions," 9 April 1926.

<sup>12</sup> Library and Archives Canada, William Lyon Mackenzie King Fonds, R10383-10-9-E, Reel C-2720, "Old Age Pensions in Canada," Letter from Mr. Peter Keenan to Prime Minister William Lyon Mackenzie King, Specific Date Unknown, Written in 1926, page 1.

<sup>13</sup> Ibid.

<sup>14</sup> See Bryden, *Old Age Pensions and Policy-Making in Canada*, 77.

<sup>15</sup> *Globe*, "Old Age Pensions," 9 April 1926.

<sup>16</sup> *Gazette*, "Old Age Pension Scheme Debate is Started in House," 16 April 1926. (Montreal, Quebec).

Each provincial government also had to arrive at an agreement with the federal government before any pensions were handed out to their respected provincial citizens. So, for example, if Alberta did not agree, then the people of Alberta would not receive old age pensions, but if Ontario agreed – those people would receive old age pensions.

### **The Old Age Pension Bill in the House of Commons**

The debate on the Old Age Pension Bill started in the House of Commons when the acting minister of labour, Mr. James Horace King moved that the House enter committee-of-the-whole on 26 March 1926 in order to consider the bill.<sup>17</sup> The debate started with the political parties in the House of Commons generally accepting the introduction and theory of pensions for aged citizens of Canada. The minister of labour, Mr. J. H. King, by saying, “I believe under this bill there will be great benefit to those people who find themselves, in their old age, without sufficient means for their maintenance.”<sup>18</sup> Conservative member of parliament, Mr. Ladner said, “I think this question is one of the most important before the people of Canada. It is far above partisan politics. It...will bring more real happiness to the maximum number of people in this country than any other enactments which have been before the House for a great many years, and for that reason I want to keep it out of party politics as much as possible.”<sup>19</sup> Other Conservatives members were also in general acceptance of old age pensions. Mr. Manion said, “I repeat that I favour the principle involved, and I believe that...we should look after our old people. We should not allow our aged to be down and out and to be dependent upon charity.”<sup>20</sup> Canada had never had a national old age pension plan and the old mostly relied on religious organizations, charities and their individual families to support them. Some individuals, if fortunate enough, had private company pensions but those were few and far between.

---

<sup>17</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada*, 1<sup>st</sup> Session, 15<sup>th</sup> Parliament, 1926, (26 March 1926), p. 1937.

<sup>18</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1939 (Mr. King, A/Minister of Labour).

<sup>19</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1954 (Mr. Ladner, Member of Parliament).

<sup>20</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2488 (Mr. Manion, Member of Parliament).

Virtually every member who spoke during the month long debate agreed that some form of social welfare ought to be provided by the state to elder citizens of Canada. Liberal member, Mr. Heenan said, "I think it is the business of the Dominion government to look after the old worn-out industrial workers and pioneers of this country, and if they can do something to assist the provinces in this matter it will be a proper policy to pursue."<sup>21</sup> Conservative member, Mr. Sutherland said, "Everybody cannot get good jobs. No matter how much effort they put forth there (are) always a certain number of people that cannot get good jobs...and we have got to look out for them."<sup>22</sup> Mr. Ladner additionally said, "The question we have to face is, has civilization advanced to the point where the state should take in its hands the distribution of the maintenance and support of our aged people, or must we leave that duty to the kindness and charity of benevolent people?"<sup>23</sup> Furthermore he said, "...I would prefer to have old age pensions than to have the Hudson Bay railway and many other public expenditures which have been made during the last few years."<sup>24</sup> Liberal member Mr. Euler stated, "I have always felt that when men and women...reach old age...the nation as a whole owes them something, not merely as a matter of charity but as a matter of right."<sup>25</sup> Finally Conservative member Mr. Barber commented, "There is probably one point on which we all agree, and that is that something is necessary in the way of old age pension legislation."<sup>26</sup> The Conservatives focused their criticism to the way the Liberal minority government brought the bill into Parliament.

The Old Age Pension Bill was introduced into the Canadian Parliament rather abruptly and the Conservative opposition cried foul. During the election campaign, months prior, there was no reference to an old age pension plan or any mention of one in the Liberal party's election manifesto.<sup>27</sup> Conservative member, Mr. Cahan

---

<sup>21</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1948 (Mr. Heenan, Member of Parliament).

<sup>22</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1963-1964 (Mr. Sutherland, Member of Parliament).

<sup>23</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1953 (Mr. Ladner, Member of Parliament).

<sup>24</sup> *Ibid.*, p. 1954.

<sup>25</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1964 (Mr. Euler, Member of Parliament).

<sup>26</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (16 April 1926), p. 2537 (Mr. Barber, Member of Parliament).

<sup>27</sup> Bryden, *Old Age Pensions and Policy-Making in Canada*, 68.

said, "It is utterly absurd, it seems to me, to present a scheme such as this, whereby the federal treasury will be bound...to the expenditure of \$12,000,000 of annual appropriations, without having secured first the approval and the co-operation of the various provinces which will be expected to contribute the other twelve or thirteen million dollars."<sup>28</sup> He additionally said, "My objection to this scheme as a scheme is that it is not well matured; it has not been carefully considered...."<sup>29</sup> The Conservatives remained cautious of what they said about the proposed legislation. Mr. Stevens remarked, "I want to be acquitted now of obstructing or opposing the principle of old age pensions, but I cannot allow this to pass without most emphatically protesting against proceeding in this way...the hopelessness of the legislation as at present draughted in the absence of an agreement with the provinces...."<sup>30</sup> There was no agreement obtained from the key administrators of the plan – the provinces.

The problem the Liberals faced with a minority government was that they were starved for support in the House of Commons. They tried to obtain the majority of plus one, and when the Labour members asked for old age pension legislation in return for confidence support, the Prime Minister agreed and along came that support. However, with that agreement arose the hasty introduction of legislation which involved direct co-operation of the provinces for success. As time restraints were present, neither consent nor approvals were obtained from the nine provinces. The Liberals believed that the bill concerning the introduction of old age pensions should be approved and any disagreement would have been rectified with the provinces at a later date. Liberal member Mr. Lapierre said, "Old age pensions are today accepted by almost all civilized nations; the only objection we have heard against the scheme, so far, has been the refusal of some of the provinces to co-operate with the government in putting such a measure into execution."<sup>31</sup> The Liberals felt provincial protest and conflict could and would be rectified after the bill's passage. Conservative member Mr. Bury criticized the path that the federal

---

<sup>28</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2472 (Mr. Cahan, Member of Parliament).

<sup>29</sup> Ibid., p. 2471.

<sup>30</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (16 April 1926), p. 2526 (Mr. Stevens, Member of Parliament).

<sup>31</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (26 March 1926), p. 1969 (Mr. Lapierre, Member of Parliament).

government took as he said, “We will not discuss it with you; we will draft and pass our act and submit it to you, and if you do not like it, we will alter it to suit the convenience of one or another or all of you.”<sup>32</sup> This is the type of legislation that alarms the Senate in that the proposed legislation was introduced too hastily and possibly ill-considered.

Two Conservative members, in particular, harshly criticized the way the Government was preceding. Mr. Stevens said, “Why do you not go to the provinces beforehand and get an agreement with them before you do anything? Why do you not bring in a bill which will reflect the opinion of the provinces?”<sup>33</sup> He continued further, “By attempting to pass a measure of this kind before a conference of the provinces is held and an agreement on the part of those provinces secured, the government are [sic] passing a piece of legislation that will be a joke on the statute books of Canada.”<sup>34</sup> Finally, “...if you get nine people around a table to confer on a given question with the federal authorities declaring that they have taken the lead in the matter, then you would have some hope of getting unanimity.”<sup>35</sup> Mr. Manion echoed his fellow caucus member, “That seems to me an extraordinary way of doing business with any person – to make your agreement first and then ask the other parties to accept it. Why not make your arrangements with the provinces first?”<sup>36</sup> He finished, “The time to discuss the matter with the provinces is not after you pass your act, but before, so that you can bring in an act which is the consensus of opinion of the different provinces, in co-operation with the Dominion.”<sup>37</sup> The Conservatives thought strongly that the federal government must discuss the proposed legislation with provincial governments first as it was ill-advised to push legislation through Parliament without securing their agreement. This was even more critically important when the proposed legislation potentially infringed on provincial rights under the *British North America Act*. What started as an agreement with two Labour members of parliament for majority support in the House of Commons began a significant

---

<sup>32</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2498 (Mr. Bury, Member of Parliament).

<sup>33</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2480 (Mr. Stevens, Member of Parliament).

<sup>34</sup> *Ibid.*, p. 2482.

<sup>35</sup> *Ibid.*

<sup>36</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2487 (Mr. Manion, Member of Parliament).

<sup>37</sup> *Ibid.*

debate in the Canadian Parliament with respect to federal incursion into provincial rights.

### Authority of Parliament verses Provincial Rights

The constitutional authority of Parliament legally to enact the Old Age Pension Bill was debated. In 1867, the *British North America Act* segmented and established a division of powers and responsibilities between the federal government and provincial governments, which is outlined in Sections 91 and 92.<sup>38</sup> The federal government's area of responsibility encompassed larger concerns such as national development and security while personal welfare typically was a local matter and made minimal significance in nation building.<sup>39</sup> Additionally, "...it might be said that the province, assuming responsibility for life's preparation through general and technical education, and assuming responsibility for the health of the people, is also responsible for old age."<sup>40</sup> The passage of old age legislation in Parliament might have infringed on the exclusivity the provincial legislatures possessed in the sphere of social legislation. Conservative member Mr. Bury said, "Surely it stands to reason that the federal government cannot force legislation on the provinces. (...) It is impossible for the federal government to enforce...old age pensions because it has no authority over property rights of individuals...."<sup>41</sup> Although Sections 91 and 92 have some clarity concerning the division of powers in the Canadian federation, like in national defence, currency and education, conversely, it was situations like this where ambiguity existed between the federal and provincial governments where one's jurisdiction lacked clarity.

Confusion developed furthermore when political leaders within the provinces stated that old age pensions had nothing to do with the provinces and if approved by Parliament, then it would be the federal government financing the entirety. The attorney general of British Columbia stated, "...the opinion is confirmed that the matter of old age pensions is a subject for the consideration of the federal and not the

---

<sup>38</sup> Please refer to the *British North America Act* – Section 92 in Appendix E.

<sup>39</sup> Bryden, *Old Age Pensions and Policy-Making in Canada*, 76.

<sup>40</sup> *Globe*, "Old-Age Pensions Elsewhere," 2 February 1926.

<sup>41</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (15 April 1926), p. 2500 (Mr. Bury, Member of Parliament).



provincial parliament.”<sup>42</sup> If the federal government proceed with their bill, the provinces should not be expected, at least the province of British Columbia, to be part of the scheme. All the individuals above, both federal and provincial, were those of politicians which perhaps were influenced by partisan views in favour of their own political party, or in favour of their province. There was one opinion that had considerable weight behind it. The federal deputy minister of justice, Mr. W. Stewart Edwards provided his expert opinion of the authority of Parliament and that of provincial rights:<sup>43</sup>

*“...with regard to the authority of Parliament to legislate on the subject of old age pensions, I may say that this subject does not fall specifically within any of the enumerated subjects given to the Dominion under Section 91 of the British North America Act, but does in my judgement fall within the subject of “Property and Civil Rights in the Province” committed to the province under Section 92. I am of opinion, therefore that the subject matter of pensions has been entrusted to the provincial legislature rather than to Parliament. I do not mean to suggest that Parliament has not the power to legislate upon the subject so as to assist the province or to establish an independent voluntary scheme, provided that in either case the legislation does not trench upon the subject matter of property and civil rights in the province, as for example by obligating any province or person to contribute to the scheme.”*<sup>44</sup>

The federal government tried to pass legislation which was extraordinarily close to or within the sphere of provincial rights. At some point, if approved, the legislation would heavily involve the provinces’ participation and cooperation and no Canadian court had ruled on the matter and the provinces had a strong argument for launching a constitutional challenge to the federal government.

### Passage through the House of Commons

The Liberal party introduced this bill in part to secure the support of the Labour members which resulted in the Liberals having majority support. Constructive consultation with the provinces was not possible as the bill was a

---

<sup>42</sup> Library and Archives Canada, Department of Justice Fonds, R188-43-X-E, Volume 2416, File 9-930/1925 Part 1. "Old Age Pension Act – Authority of Parliament to legislate on the subject of old age pensions – jurisdiction by provincial legislature: *Old Age Pension Act* and *British North America Act* 1867, S-91 & S-92." Letter from the minister of labour (province of British Columbia), Mr. A.M. Manson to the minister of labour (federal), Mr. James Murdock, 5 March 1925.

<sup>43</sup> Please note that a Deputy Minister in the Canadian federal government is a civil servant; they are the chief civil servant in their respective department. The British equivalent is Permanent Secretary.

<sup>44</sup> Library and Archives Canada, Department of Justice Fonds, R188-43-X-E, Volume 2416, File 9-930/1925 Part 1. "Old Age Pension Act – Authority of Parliament to legislate on the subject of old age pensions – jurisdiction by provincial legislature: *Old Age Pension Act* and *British North America Act* 1867, S-91 & S-92." Letter from the deputy minister of justice, Mr. W. Stewart Edwards to member of parliament, Mr. William G. Raymond, 23 May 1925, pages 1-2.

hurried piece of legislation. One cannot blame the Liberals for trying, and the Conservatives were very cautious in their speeches as not to appear to be against old age pensions. Mackenzie King's minority government was still in its infancy and only had a razor thin majority of confidence, an election could have occurred at any time and the Conservative would not want to be the party openly against old age pensions in a national election. With that, as Bryden noted, "No one was prepared to vote against the bill, and it passed all stages without division."<sup>45</sup> The Old Age Pension Bill received its third reading in the House of Commons on 28 May 1926.<sup>46</sup> The House of Commons passed the Old Age Pension Bill without division, but the Senate blocked it as it determined the bill had serious problems.

### **The Old Age Pension Bill in the Senate**

The political landscape in the Senate had changed since the Naval Aid Bill from a Liberal to a Conservative majority, reflecting appointments made during the lengthy premiership of Robert Borden. Unlike the House of Commons, which faced a Liberal minority government with minimal support, the Conservatives were in solid control of the Senate.

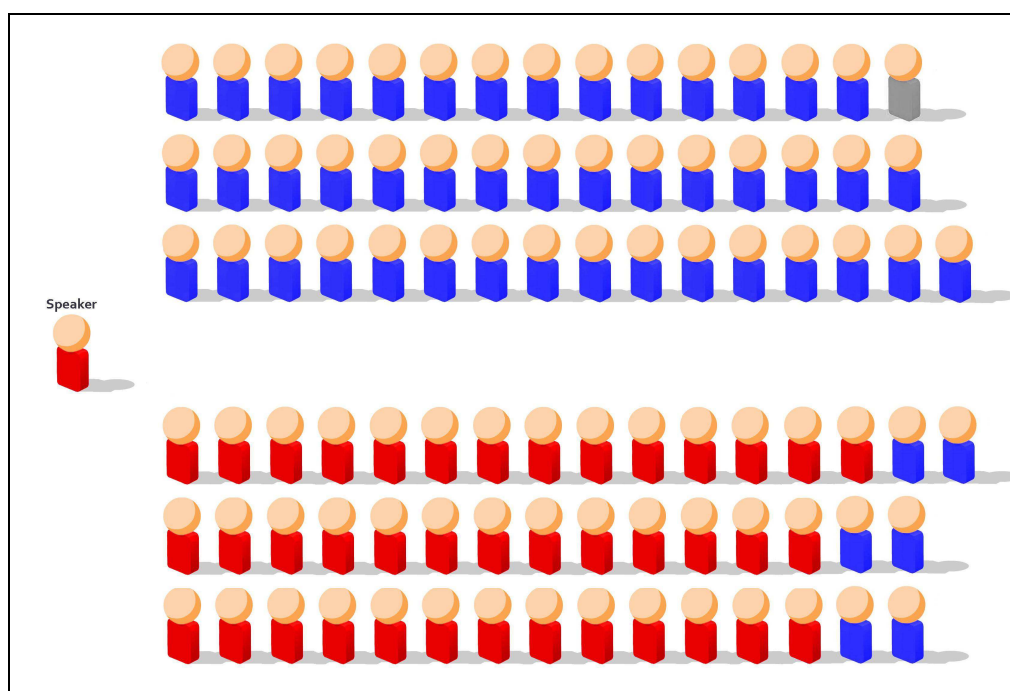
(Diagram 5.1 on next page)

---

<sup>45</sup> Bryden, *Old Age Pensions and Policy-Making in Canada*, 70.

<sup>46</sup> Dominion of Canada, *Debates of the House of Commons of the Dominion of Canada* (28 May 1926), p. 3818.

Diagram 5.1 – Political Party Allocation in the Senate in 1926<sup>47</sup>



The Senate in 1926, with ninety-three senators, forty-one were Liberal senators (red), while there were fifty-one Conservative senators (blue), plus 1 independent senator (grey).

The Fathers of Confederation had envisaged the Senate not only as a chamber of sober second thought on legislation but also one which would take full account of the interests of the provinces and regions of Canada. The Old Age Pension Bill provided a good institutional test on the upper chamber as the bill developed and passed through the lower chamber with rather speed even though the bill appeared to intrude into an area of provincial jurisdiction. The Old Age Pension Bill was introduced into the Senate at the beginning of the debate by the leader of the government in the Senate, Senator Dandurand (Liberal – Quebec), “Honourable gentlemen, this bill aims at providing old age pensions for people who have reached the age of seventy. It is not a new idea. Although no effort has hitherto been made to legislate in this matter, the question has often been debated in the Canadian Parliament. It is not new in the rest of the world.”<sup>48</sup> He continued, “There is not a

<sup>47</sup> Parliament of Canada. “Senators.”

<http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-57a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&PrimeMin> (Date created unknown, date revised 1 March 2010, date last accessed on 31 August 2011).

<sup>48</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada*, 1<sup>st</sup> Session, 15<sup>th</sup> Parliament, 1926, (2 June 1926), p. 132 (Mr. Dandurand, Leader of the Government in the Senate).

citizen of Canada who does not know, and see under his own eyes, people who are in want yet are being insufficiently provided for.”<sup>49</sup> Furthermore, he highlighted how, “The aged poor in our country have been supported partly by private effort and partly by public institutions established by the municipalities and the provinces.”<sup>50</sup> This bill was designed so that federal and provincial governments would provide equally to those in need. After Senator Dandurand finished his opening remarks, the Old Age Pension Bill received first reading on 1 June 1926.<sup>51</sup> After the pleasantries of the introduction were over, the Conservative majority ardently attacked the bill.

### No Demand

Numerous senators from the forefront were opposed to the bill as there was simply no demand originating for it from the provinces. Senator Black (Conservative - New Brunswick) said, “May I point out to honourable gentlemen opposite, and to the members on this side of the House as well, that legislation of this kind has not been asked for by any province of Canada. (...) I cannot find in the record a single request from any province in Canada for legislation of this kind.”<sup>52</sup> Senator McCormick (Conservative - Nova Scotia) echoed similar feelings, “I intend to vote against this measure because it is not called for; there is no part of the country demanding it; there is no province asking for it; and therefore the purpose for which it is brought in is unworthy of support, at least in this House.”<sup>53</sup> Senator Robertson (Conservative - Ontario) said, “...no province in Canada has made such a request. Naturally not, because the provinces have recognized up to the present time that the obligation has been theirs to look after the old people within their own boundaries.”<sup>54</sup> The Leader of the Government in the Senate replied back that demand from the provinces may not exist, but there were people in Canada at the age of seventy or older who needed such assistance. Senator Dandurand said, “All these efforts have

---

<sup>49</sup> Ibid., p. 136.

<sup>50</sup> Ibid., p. 133.

<sup>51</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada*, 1<sup>st</sup> Session, 15<sup>th</sup> Parliament, 1926, p. 245.

<sup>52</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.163 (Mr. Black, Senator).

<sup>53</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.167 (Mr. McCormick, Senator).

<sup>54</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.176 (Mr. Robertson, Senator).

not solved satisfactorily the needs of a vast number of men who, upon reaching the age of seventy, look in vain for support.”<sup>55</sup> According to the federal government, the bill was a proactive measure for social welfare assistance for the old aged, but the majority of the senators felt that there was simply no demand from the provinces for it.

### Coming in Too Hastily

The second issue that senators had problems with was the speed with which the bill came about in Parliament from virtually no mention to it prior to its introduction by the Minister of Labour in the House of Commons. Some senators took issue with this haste and the lack of due diligence required with such a bill. Senator Foster (Conservative – Ontario) said, “...I am opposed to this bill as it is introduced, because it is not based upon the best and most thorough investigation that could possibly be given the matter.”<sup>56</sup> He continued, “...why has the present Government displayed such hectic haste in bringing this legislation before Parliament in order to fasten upon this country an initial expense of \$25,000,000 which, once started, will grow until it runs into hundreds of millions of dollars?”<sup>57</sup> The Senate was intended to act as a sober second thought to such bills when they are introduced and passed through the House of Commons with such speed without the proper examination warranted to them, especially a bill which appeared to be invasive in the provincial field. Senator Tanner (Conservative - Nova Scotia) in part asked, “...why (is there) so much haste to bring in and pass a bill which invades the legislative territory of the provinces...”<sup>58</sup> Not only was there a belief of a perceived infringement into the provincial field of legislation, the federal government had proceeded with neither consultation nor consent from the provinces.

---

<sup>55</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (2 June 1926), p.133 (Mr. Dandurand, Leader of the Government in the Senate).

<sup>56</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.179 (Mr. Foster, Senator).

<sup>57</sup> *Ibid.*, p. 180.

<sup>58</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.172 (Mr. Tanner, Senator).

### Lack of Provincial Consultation

One of the most contentious issues for the Senate surrounding the Old Age Pension Bill was that the provinces were not fully consulted on the proposed legislation. The Senate felt that was important as this was legislation which required equal partnership. Senator Reid (Conservative - Ontario) said, “...(the federal government) did not give the provinces an opportunity to be consulted, although the whole question is one of provincial right.”<sup>59</sup> Senator Reid continued, “Yet, without consulting anybody, the Government draft(ed) a bill and presented it to Parliament.”<sup>60</sup> Senator Lewis (Liberal - Ontario) echoed a similar argument, “...the provinces ought to have been consulted more fully than they have been, and their consent should have been obtained before this legislation was proposed.”<sup>61</sup> Senator Ross (Conservative - Nova Scotia) concluded, “Unless you arrive at an agreement with the provinces, you are simply legislating in the air.”<sup>62</sup> Most senators agreed that this bill entered Parliament with far too much haste and without the proper consultations and consent required with this piece of legislation. Senator Dandurand argued differently, in that the federal government did not need to consult with the provinces nor require their consent because, if passed, the Old Age Pension Bill could then be examined by each province knowing it as an actual law and not an abstract idea. Senator Dandurand said if the bill passed, “...the provinces will thus know what the Dominion is ready to do, what it is offering, to what it has bound itself by its offer – which will not be simply a tentative offer, but a reality.”<sup>63</sup> The federal government wanted the bill passed, then it could begin provincial consultations with a legal document, a concrete offer which if needed could be amended to suit. The majority of the Senate did not approve of this way of handling federal - provincial legislation nor relations. There was a larger issue the Senate had with the Old Age Pension Bill, away from the fact that the provinces were not fully

---

<sup>59</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.163 (Mr. Reid, Senator).

<sup>60</sup> Ibid., p. 162.

<sup>61</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.172 (Mr. Lewis, Senator).

<sup>62</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.155 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>63</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (7 June 1926), p.136 (Mr. Dandurand, Leader of the Government in the Senate).

consulted nor was consent given, which was the infringement into of provincial rights and responsibilities.

### Infringement into Provincial Jurisdiction

The Senate's primary focus on the Old Age Pension Bill was the perceived infringement of provincial rights which was out of the realm of the federal Parliament. Senator McMeans (Conservative - Manitoba) said, "I am one of those who sincerely believe that this is purely a question for the provinces, and that each province should have its own measure of old age pensions."<sup>64</sup> Senator McCormick (Conservative - Nova Scotia) warned the Senate, "Honourable gentlemen, this measure is not one of the subjects with which this Parliament has power to deal. It is a matter that should be provided for by the provincial legislatures of the country."<sup>65</sup> Senator Tanner (Conservative - Nova Scotia) did not understand why the federal government was entering the provincial legislative arena. The Senator said, "I think the field of the provincial legislation should be left to the provincial legislature, and that the Federal Parliament should content itself with dealing with matters that come within the purview of this Parliament."<sup>66</sup> Senator Calder (Conservative - Saskatchewan) was more direct to the Senate, he said, "Personally, I am strongly opposed and always will be strongly opposed, to any encroachment by the Parliament of Canada upon the provincial field of legislation."<sup>67</sup> The Senate was intended to protect such encroachment of legislation and act as a last line of defence which had the power to block this type of legislation before it became law. Senator Calder continued, "...this House should take the greatest precaution to avoid encroaching on the provincial field of legislation. There is nothing that will give rise to greater trouble in this country, as it has done in the past, than interference on the part of the federal government in provincial affairs."<sup>68</sup> Finally, the leader of the opposition in the Senate, Senator Ross (Conservative - Nova Scotia) said,

---

<sup>64</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.169 (Mr. McMeans, Senator).

<sup>65</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.167 (Mr. McCormick, Senator).

<sup>66</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.170 (Mr. Tanner, Senator).

<sup>67</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.175 (Mr. Calder, Senator).

<sup>68</sup> Ibid.

“...according to the Department of Justice, the subject-matter over which we are legislating had been assigned under our federal constitution to the provinces. I think it is a good general rule to lay down and follow as closely as possible, that the Parliament of Canada, or any house legislating under a similar constitution, should confine itself to those subjects which have been assigned to it, and the provinces to the subjects that have been assigned to them.”<sup>69</sup> Senator Belcourt (Liberal – Ontario) felt clarification was needed on the Senate floor towards the unwarranted encroachment on the provinces. Senator Belcourt said, “Nothing is forced on any province, but the province is invited, purely and simply, to come in with the Dominion Government and together make a scheme...”<sup>70</sup> Nothing in the Old Age Pension Bill would force the provinces to participate, if it got passed, the federal government would welcome any and all provinces to participate with them to assist the old aged population in Canada. However, that was not the issue to the majority in the Senate, the issue was that the federal government has no business in the creation of legislation on subjects that fell within the purview of the provinces.

### Blockage of the Old Age Pension Bill

The debate moved further past the direct topic of old age pensions and proceeded to a much larger debate on Parliament and politics behind the bill. Senator Hughes (Liberal - Prince Edward Island) stood in the Senate and said, “The Senate, as I understand it, is specially charged with the protection of minorities and with the responsibility of seeing that the Constitution is fairly carried out as between the federal power and the provincial authorities. Therefore anything that even indirectly entrenches upon the political field should, and will no doubt, receive the careful consideration of this House.”<sup>71</sup> The Old Age Pension Bill was a bill created by the federal government that encroached upon the political and constitutional field of the Canadian provinces as it was a bill concerning civil and social issues, not national development. Such a bill, according to Senator Hughes ought to receive careful

---

<sup>69</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.155 (Mr. Ross, Leader of the Opposition in the Senate).

<sup>70</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.159 (Mr. Belcourt, Senator).

<sup>71</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.178 (Mr. Hughes, Senator).



consideration or, in other words, a sober second thought. This was further commented by Senator Calder (Conservative – Saskatchewan), “This Confederation has existed from 1867 down to the present time, and the whole problem of looking after the civil population, in every respect, has been taken care of by the provinces.”<sup>72</sup> A bill that clearly broke into the confines of provincial legislation caused concern for the senators as they represent each province in Parliament, and they clearly knew that the provinces had not been fully consulted or granted consent to the bill.

Finally, Senator McCormick (Conservative - Nova Scotia) said what everyone knew in the Senate yet never said, “I do not think there is any doubt in the minds of those who have been following the affairs of this country for some years that this measure was proposed simply in order to secure the support of two men who call themselves Labour men in the other House.”<sup>73</sup> Moments before the vote took place Senator Foster (Conservative - Ontario) had some final cautionary remarks to his fellow senators, “...political tendency is shown in democratic countries everywhere, and so long as that is not curbed, and in proportion as it grows and the strife and duplication continue, you will have confusion and you will be marching every day closer and closer to the failure of democratic institutions. I think that safety is to be found only in each parliamentary power confining itself as closely as possible to the limits of its own constitutional territory and respecting the constitutional territory and limits of the provincial or state powers which are under it.”<sup>74</sup> The Old Age Pension Bill appeared to cross the line into provincial jurisdiction, without the consent of the provinces as it was introduced into Parliament in a rather hasty manoeuvre in order to secure the support of certain members of parliament. After the passage of the bill in the House of Commons, the Old Age Pension Bill was blocked by the majority of senators on the evening of 8 June 1926; the Senate

---

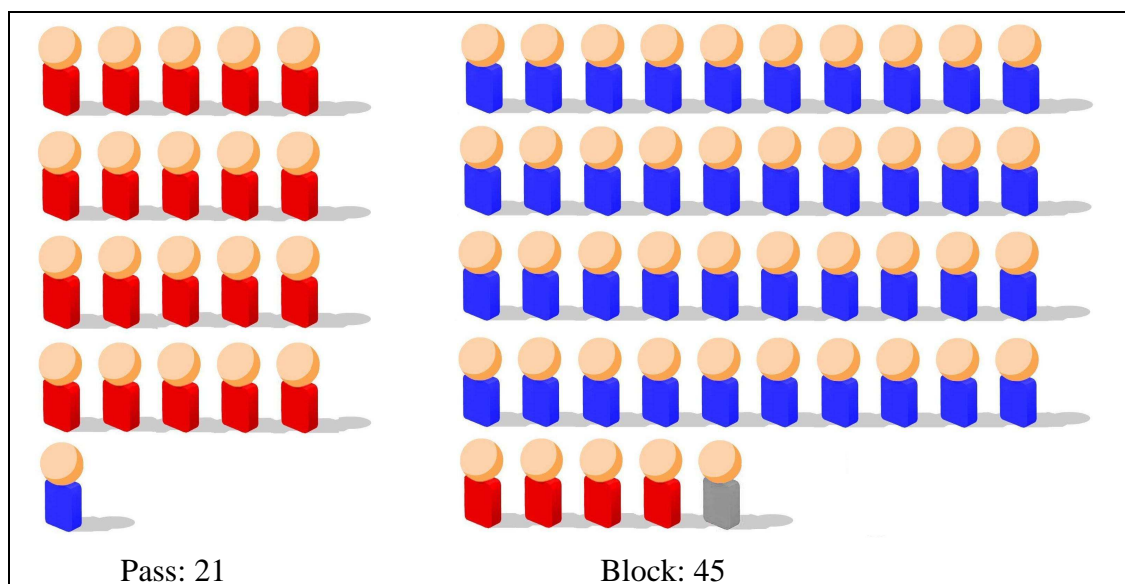
<sup>72</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.173 (Mr. Calder, Senator).

<sup>73</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.167 (Mr. McCormick, Senator).

<sup>74</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada* (8 June 1926), p.180 (Mr. Foster, Senator).

rejected the passage of the Old Age Pension Bill in a vote of forty-five to twenty-one.<sup>75</sup>

Diagram 5.2 – The Senate vote regarding the Old Age Pension Bill<sup>76</sup>



The Old Age Pension Bill vote, there were 66 senators present for the vote. 20 Liberal senators (red) and 1 Conservative senator (blue) voted to pass the bill, while 40 Conservative senators, 4 Liberal senators and 1 independent senator (grey) voted against it.

The Senate vote on the Old Age Pension Bill again demonstrated the perpetual issue of political party block voting. The Senate voted in a politically partisan manner which is not in line with the intentions of the Senate that its creators originally intended and the question of Senate independence becomes questioned. The Fathers of Confederation created a Senate with no public elections in order to allow each senator to evaluate and legislate on what they considered to be right for Canada and not necessarily for what was considered to be the most popular approach. Having their seats for life granted senators the opportunity to vote in this way without fear of losing their seats in an upcoming election if the vote proved unpopular.

If one examines the “Pass” vote above, it shows out of twenty-one votes, twenty Liberal senators voted in favour of it. It would be an unconvincing argument to state that it was a coincidence. In the “Block” vote above, it shows out of forty-five votes, forty Conservative senators voted against it. Again it would be an

<sup>75</sup> Dominion of Canada, *Journals of the Senate of the Dominion of Canada* (1926), p. 282.

<sup>76</sup> Ibid.

unconvincing argument to state that it was a coincidence because two questions can be asked towards the Liberal and Conservative senators. To the Liberal senators, one might have asked, “You voted in favour of the Old Age Pension Bill, because you support the idea of pensions, but do you not feel that this bill was developed too hastily and rather ill-conceived and as a senator who sits in the Senate as a representative of their respective province, why would you approve legislation directly effecting the provinces without full consultation and consent of their governments?” To the Conservative senators, one might have asked, “You voted against the Old Age Pension Bill, primarily because of the lack of consultation and consent from the provinces and the possible infringement within their constitutional rights, but why would you reject legislation which would have provided old age pensions to those in need throughout Canada. Surely the Dominion government and the provinces could have worked something out after Royal Assent?” One possible answer to both these questions is found in the House of Commons.

The Canadian House of Commons in 1926, had a Liberal minority government with razor thin support. The Liberal senators perhaps thought that it was only a matter of time before the Liberal government fell on a vote of confidence, so the Liberal senators might have chosen to pass this publicly popular bill in the hope that the Liberals would look better in the public sphere rather than legislating on the true merits of the bill as being a bill that was ill-considered and flawed. The Conservative senators might have been bitter and angry at the political dealings in the House of Commons allowing the Liberals to form the government when the Conservatives had the greater number of seats in the lower chamber. Perhaps the Conservative senators were feeding into the political situation in the House of Commons, showing how the Senate is not pure and separated from the House of Commons in Parliament as the Fathers of Confederation had intended.

The main criticism that can be charged against the Senate was that of partisanship and block voting. Although no direct evidence was found of political influence or interference from prominent members of Parliament towards the Senate, as with the case of the Naval Aid Bill, there are always questions of that possibility as this prominent bill was created through an agreement within the House of Commons for very critical support that the minority Liberal Government needed to

maintain confidence in the lower chamber. Some argue that the Senate should not be blamed for the blockage but rather Prime Minister Mackenzie King. As the *Gazette* argued, the Prime Minister had "...the opportunity of being very gracious to clamorous minorities and winning their gratitude by introducing the legislation they desire, secure in the knowledge that the Senate will throw it out in any case."<sup>77</sup> The newspaper also asserted that this, in turn, "...is a form of political dishonesty, and the Senate is the goat of it. The Government by means of it is permitted to make its plays to the gallery, while the Senate becomes increasingly unpopular."<sup>78</sup> Perhaps the Liberal Government went along with the Labour members in order to get their support, rather than saying no and face defeat in a confidence motion. They passed the Old Age Pension Bill and due to perfuse deficiencies the Senate was almost forced to block it. Just as the Old Age Pension Bill was passed in the House of Commons with a majority, the Senate blocked it with another majority and that is what a democratic parliament does, they act in the will of the majority.

Aside from the partisan voting in the Senate, the senators fulfilled the intentions of the Fathers of Confederation. The Senate's primary intention and function was to legislate. The majority of the Senate voted and blocked the passage of the Old Age Pension Bill originating from the House of Commons as it felt there were fundamental flaws with it that could not have been rectified even with Senate amendments. The *Globe* noted that, following the blockage, "Criticism of the Senate (had) been revived in a vigorous manner in various parts of Canada as a result of the rejection of the Old-Age Pensions Bill."<sup>79</sup> The blockage angered some but that was to be expected as with every bill there are supporters and opponents. At their annual convention, the Montreal Trades and Labour Council publicly denounced the actions of the Senate. As the *Gazette* noted, the Council concluded that the senators were, "...hard-hearted, unjust and injudicious in killing the Old Age Pensions Bill, passed by the Lower House."<sup>80</sup> Similarly, in Toronto, the *Globe* commented that, "Rejection of the old-age pensions bill by the Senate (threw) this important piece of social

---

<sup>77</sup> *Gazette*, "The Senate's Critics," 21 June 1926.

<sup>78</sup> *Ibid.*

<sup>79</sup> *Globe*, "The Unreformed Senate," 24 June 1926.

<sup>80</sup> *Gazette*, "Senate Denounced For Killing Bill," 18 June 1926.

legislation back into the waiting line, where it (had) been stationed for several years.”<sup>81</sup>

The Prime Minister was exceptionally angered by Liberal senators who had voted against the bill and Liberal senators who were entirely absent from the Senate during the vote.<sup>82</sup> However, perhaps the four Liberals who voted against the bill demonstrated a heightened level of independence by voting against their party. Additionally of those four, we can conject that Senator Aylesworth and Senator Hughes (both of whom had been appointed on the advice of Prime Minister Mackenzie King) were not yet “institutionalized” by the Senate and legislated independently. Senator Robertson, the only Conservative senator acted against his party as he considered that the bill warranted passage.

Out of the three blocked bills in the Senate, examined in this thesis, the Old Age Pension Bill directly concerned provincial rights. The Senate was created as a chamber which consisted of its members representing each of the provinces, and later territories, throughout Canada. In an article authored by Arthur Meighan, former prime minister of Canada and leader of the opposition during the Old Age Pension Bill, he wrote, “...the Senate has the particular duty of standing guard over the Constitution as it applies to all sections of Canada, of making certain that provincial rights are maintained inviolate, that the relationship which the *British North America Act* established between provinces, on the one hand, and the federal state, on the other hand, is respected, whatever may be for the time being the arbitrary action of a bare majority.”<sup>83</sup> The Senate protected the Canadian provinces with the hasty, ill-consulted, and possibly constitutionally-infringing Old Age Pension Bill as there was a provincial rights issue with this bill and the Fathers of Confederation intended that the Senate would represent and protect provincial rights from any possible infringement.

---

<sup>81</sup> *Globe*, “More Education Needed,” 10 June 1926.

<sup>82</sup> See Library and Archives Canada, William Lyon Mackenzie King Fonds. MG26-J13. “The Diaries of William Lyon Mackenzie King,” 7 June 1926.  
<http://www.collectionscanada.gc.ca/databases/king/001059-100.01-e.php> (Date created 4 December 2007, date last accessed on 31 August 2011).

<sup>83</sup> Arthur Meighan, “The Canadian Senate.” *Queen’s Quarterly* 26, 2 (1937): 153-154.

## **Conclusion**

In 1926 the Senate blocked the Old Age Pension Bill which was an important piece of social welfare legislation that would have provided financial assistance to individuals over the age of seventy in Canada. Virtually every senator supported old age pensions for Canadians, but not the Old Age Pension Bill that was introduced to Parliament in 1926. The senators supported the idea of welfare for Canadians and financial support but the ultimate rejection surrounded two issues. First it was not in the Liberal election manifesto or propaganda and after the election it was not in the Speech from the Throne. The bill was introduced in haste as the result of an agreement for support in the House of Commons. As the lower chamber passed the House of Commons without opposition, the Senate acting as the workshop of Parliament broke away from the generalities of the bill in supporting old age pensions and focused on the possibility of an infringement of provincial rights entrusted to the provinces in the federation under Section 92 of the *British North America Act*. The Senate was not concerned about the issue of supporting people, they all agreed with that idea, it was the infringement into provincial rights and the complete lack of consultation of the key stake holders. There was a very real possibility of infringement into the constitutional area of entrenched provincial rights and the federal government never consulted nor obtained an agreement with any province.

The Fathers of Confederation and the framers of the Constitution established the Senate to legislate as the upper chamber in the Canadian Parliament and to articulate and express Canada's regional and provincial concerns towards legislation that proceeded through Parliament. The Old Age Pension Bill was a valuable test for the Senate as it involved both primary roles of the Senate. Legislatively the Senate found the bill entered Parliament too quickly without the due diligence required for such an important piece of legislation potentially involving nearly a dozen governments. Representatively, the Senate acted as their respective provincial representatives in the upper chamber and determined that the Old Age Pension Bill constituted an infringement into the provincial sphere of legislation. The Senate might have found the intrusion acceptable if the provinces they represented were properly consulted by the federal government and if they granted their consent to

move forward with it. However the former and latter were not achieved and the Senate blocked passage of the Old Age Pension Bill as it might have set a dangerous precedent within the Canadian federation.

## **Chapter Six: Conclusion**



## **Introduction**

Discussion about Senate reform is “...one of the enduring features of Canadian political life.”<sup>1</sup> Nonetheless, the Senate has undergone minimal reform since Canada’s creation in 1867 and the last substantial reform was in 1965 when mandatory retirement, at the age seventy-five, was introduced. Despite countless attempts at reform, the Canadian Senates remains “...one of the last unreformed chambers in Westminster-based parliamentary democracies.”<sup>2</sup> Notwithstanding limited reform in Canada, it appears likely that the current Conservative Government under Prime Minister Harper will pass some measure of reform through Parliament, given that the Conservatives have majorities in both the House of Commons and Senate. Earlier in 2011, Bill C-7, *An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits*, was introduced. The discussion on Canadian Senate reform has been reignited again and is alive and well, but there remains many questions because if the Senate is constantly being singled out for reform, there must be something problematic with its performance. However, was there ever a period during the Senate’s history that it performed as it was intended?

My review of the literature on the Canadian Senate revealed that very little attention had been paid to the performance of the Senate during the first sixty years of its history. An examination of the Senate during its early years was of interest as Confederation itself was a significant process of constitutional reform. The immediate period following thereafter provided a period of time when little had changed within the Senate as not enough time had lapsed in Canadian political history for the Senate to have evolved away from its original design.

My focus on the development of the Senate in its first sixty years provided opportunities to examine the introduction of government legislation from Conservative and Liberal governments, headed by three different prime ministers. This time frame also allowed for the analysis of a blocked government bill originating from a minority government. As senators were appointed for life, the

---

<sup>1</sup> Jack Stilborn, *Senate Reform: Issues and Recent Developments*. Ottawa: Library of Parliament, 21 January 2008. [http://epe.lac-bac.gc.ca/100/200/301/library\\_parliament/backgrounders/2008/senate\\_reform-e/prb0742-e.pdf](http://epe.lac-bac.gc.ca/100/200/301/library_parliament/backgrounders/2008/senate_reform-e/prb0742-e.pdf), 3.

<sup>2</sup> David Docherty, “The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About,” *The Journal of Legislative Studies* Vol. 8, No. 3 (Autumn 2002): 27.

sixty year time frame also allowed the political party control of the Senate to be alternated between both major political parties that have held the government, which enabled me to consider how the changing membership of the Senate affected the legislative debate.

This thesis analyzed the original intentions for the Canadian Senate, developed by the Fathers of Confederation, and it showed how the architects of the Senate regarded it as a chamber for sober second thought. The thesis then considered the extent to which the senators followed the founders' intentions when legislating over three government bills that were blocked in the Senate during the first sixty years of its existence. It is easy for one to state that the modern Senate needs reform, as the current Senate is an easy target which has had little formal reform to it, but this thesis analyzed the Senate in a period immediately following its creation and examined if it performed as intended.

### **Intentions**

The intentions of the Fathers of Confederation for the Senate were critical in the analysis of the Senate's performance during the first sixty years. These individuals created the Senate and established criteria for its evaluation. The primary function intended for the Senate was to legislate and the secondary function was of representation. According to John A. Macdonald, to legislate was to "...calmly (consider) the legislation initiated by the popular branch, and (prevent) any hasty or ill-considered legislation which may come from that body."<sup>3</sup> The Senate was designed to act as a bulwark, with justified reasoning, against the House of Commons, blocking legislation which its members concluded was not in the best interest of Canada. Joseph Édouard Cauchon stated the Canadian Senate ought "...to moderate the precipitancy of any government which might be disposed to move too fast and go too far...a legislative body able to protect the people against itself and against the encroachments of power."<sup>4</sup> Secondly, in federations like Canada, upper

---

<sup>3</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces*, 3<sup>rd</sup> Session, 8<sup>th</sup> Parliament, (6 February 1865), p. 36 (Mr. Macdonald, Member of Provincial Parliament).

<sup>4</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (2 March 1865), p. 572 (Joseph Édouard Cauchon, Member of Provincial Parliament).

chambers usually perform a second role of representation of regions, provinces, states, and territories within the national legislature. The Canadian Senate was intended to represent, articulate and express the larger regional concerns of Canada. This is why senators represent larger regions and not individual constituencies, with the exception of Quebec. The final intention for the Senate was that of protector of rights from legislative infringement. In the view of James G. Curry, the Senate was "...to guard (Canadian) interests, protecting them against hasty and ill-considered legislation, and preventing improper and extravagant appropriations of the public funds."<sup>5</sup> The intentions of the Fathers of Confederation for the Senate were to legislate, represent and protect.

### **A Sober Second Thought**

The blockage of government bills is the most significant action that could be performed by the Senate and three were explicitly selected to create a well-rounded sample, as together they encompassed provincial, national and international dimensions of legislation, all of which included a regional element. This thesis demonstrated that through an analysis of the Esquimalt and Nanaimo Railway Bill, the Naval Aid Bill, and the Old Age Pension Bill, senators provided a well informed, critical sober second thought. Nonetheless, there were constant problems surrounding the issue of partisan block voting that had concerned the Fathers of Confederation, and this affected the independence of the Senate and the legislative outcomes in each case.

### **The Esquimalt and Nanaimo Railway Bill**

In 1875 the Senate found after careful consideration blockage was necessary in order to prevent the passage of the Esquimalt and Nanaimo Railway Bill. It was blocked on the grounds that the Government and Parliament lacked critical information on the railway and because it was a local railway which lacked national significance. This bill provided an excellent opportunity to examine the performance of the Senate as Confederation and the Senate were less than ten years old and many

---

<sup>5</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (17 February 1865), p. 288 (James G. Curry, Member of Provincial Parliament, quoting David L. Macpherson, Member of Provincial Legislative Council).

of the Fathers of Confederation were still in Parliament. Their intentions for the Senate were therefore still present in the minds of the parliamentarians.

The bill was hastily introduced into Parliament, and the Senate did not appreciate the fact that the geographical surveys on Vancouver Island were incomplete. The Senate disliked the vague estimates of the proposed railway, particularly as these were high and the Government was not going to present a final cost of the railway to Parliament. The Senate did not want to be extravagant and unjustifiable in appropriations of public funds. The Senate performed in accordance with the intentions of the Fathers of Confederation where they wanted a chamber that would slow down the pace of legislation, examine and scrutinize it with a fresh perspective.

The Senate was also intended to represent, articulate and express regional concerns and act as a protector of rights. Of the three blocked bills within this study, the Esquimalt and Nanaimo Railway Bill was the most regionally based in which it directly related to a very specific part of Canada. This local railway was a public works project in which the federal government should not have become involved for it was a provincial matter. The senators from British Columbia argued this railway should be approved because it would benefit the federation as it would demonstrate that the federal government could complete major public works projects throughout the federation which would raise the provinces' confidence of the relatively new federal government. Unfortunately, British Columbia's representation in the Senate was a challenge, as the Senate's western region was not officially designated a region within the Senate. As a result senators from the West of Canada were greatly outnumbered by senators from Ontario, Quebec and the Maritimes.

The Senate's decision to block the Esquimalt and Nanaimo Railway Bill is possibly one of the first acts by the federal parliament that contributed to the broader development of western alienation in Canada. The Senate is a democratic chamber, where the majority rules and a number of senators from Ontario expressed their desire to protect the taxpayers as the people from Ontario, Quebec, Nova Scotia and New Brunswick, would be financing the local railway on Vancouver Island. Regardless, the Esquimalt and Nanaimo Railway Bill would have impeded upon the constitutionally guaranteed provincial rights of British Columbia. The bill did not

represent good policy and the Senate argued that the federal government should not get involved with local railways, because Section 92 of the *British North America Act* explicitly states that the provinces have the exclusive control over local railways.

The Senate also disfavoured direct British involvement with the intra-national dispute between the federal government and British Columbia. It appeared to the Senate that the British government was trying to dictate the legislative agenda of Canada with respect to a dispute within Canadian borders. Canada was still relatively young, but I would argue that, even at this stage, the Senate was trying to assert greater independence from Britain. In the end, the Senate voted to block the passage of the Esquimalt and Nanaimo Railway Bill because the proposed legislation relied on a vague sum of money (that could amount to millions of dollars) being prescribed by a foreign government for the construction of a local railway. The Senate viewed the legislation as an unconstitutional infringement on the rights of the province.

### The Naval Aid Bill

In 1913 the Senate found that after careful consideration blockage was necessary to prevent the passage of the Naval Aid Bill, on the grounds that it would have set a bad precedent for future national development and Canadian international autonomy. This bill provided an excellent opportunity to examine the performance of the Senate with a nationally and internationally significant piece of legislation. Prime Minister Robert Borden introduced the Naval Aid Bill as he felt the best thing to do was assist Britain with a significant contribution. In his view, there was a strong sense of urgency, and Imperial unity would protect everyone. However, in the House of Commons, Wilfrid Laurier, as leader of the Liberal opposition, argued for the further development and promotion of the Royal Canadian Navy, on the grounds that the federal government should be directly investing in Canada for the protection of Canadians. Both the Liberals and the Conservatives were adamant that their own policy was the superior policy and the debate in the House of Commons turned into a farce with Liberal obstruction. After some two-hundred and thirty hours of debate, the Conservatives introduced closure which essentially brought the debate to a conclusion. Opinions in the House of Commons were solidified and Canadians differed in opinion greatly.

The Senate reacted differently from the House of Commons, and it blocked the Naval Aid Bill from passage. There were two major elements in the legislation with which the Senate took issue. First, once again there was the appearance of British interference within an arena of Canadian internal policy which the Senate considered unconstitutional in light of the federal government's responsibility for "Militia, Military and Naval Service, and Defence," as specified in Section 91(7) the *British North America Act*.<sup>6</sup> The Senate acted as a protector of rights and there were many arguments that concluded the bill infringed on rights guaranteed to Canada under the *British North America Act*. The second major element with which the Senate had issue was the lack of focus on Canadian national development in the proposed legislation. By providing a large financial contribution to the Royal Navy, Canada would have established a precedent of recurring contributions which the Liberals considered to be retrogressive and contrary to Canadian development. They argued that Canada was still a developing nation and if the money was allocated to the Royal Canadian Navy and related industries, Canada would have witnessed greater national development, economic development, industrial development and regional development, all of which were important elements towards achieving greater national autonomy for Canada.

The Senate, in part, followed the intentions of the Fathers of Confederation by blocking a fiscally imprudent use of Canadian taxpayer's money. The Senate considered the bill's passage would have hindered the advancement of Canadian national defence. In the Senate's view it was time for Canada 'to paddle her own canoe' and not lose sight of Canadian national interests of self-security rather than dependent security. However, as the Naval Aid Bill created great controversy, and generated strongly opposing arguments, the Senate lost clarity on where the majority of Canadians stood on this principal issue. As a result, many senators favoured a plebiscite and the Senate blocked the passage of the Naval Aid Bill by stating, "That this House is not justified in giving its assent to this bill until it is submitted to the judgement of the country."<sup>7</sup>

---

<sup>6</sup> Please refer to Appendix E for the full excerpt of the Section.

<sup>7</sup> Dominion of Canada, *Debates of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 12<sup>th</sup> Parliament, (29 May 1913), p. 858.

### The Old Age Pension Bill

In 1926 the Senate found that after careful consideration blockage was necessary in order to prevent the passage of the Old Age Pension Bill, on the grounds that its introduction into Parliament was hasty, potentially unconstitutional, and carried out with no evidence of demand for such legislation from either the provinces or the public. To obtain a razor thin majority in the House of Commons, Mackenzie King and his Liberal minority government, required the support of the Progressive members and Labour members. Progressive support was easily obtainable but to survive, King was required to introduce an old age pensions bill to obtain the support of the Labour members. The bill would have provided old age pensions of twenty dollars per month to individuals seventy years or older. Virtually every member of the House of Commons agreed upon the principle of old age pensions, and the bill was easily passed through to the Senate. What started as an agreement with two Labour members of parliament for majority support in the House of Commons began a significant debate in the Canadian Parliament with respect to federal incursion into provincial rights. This bill provided an excellent opportunity to examine the performance of the Senate with this socially and nationally significant piece of legislation.

The Senate was supportive of providing pensions for the old aged, but it did not appreciate how the Government went about this in developing the Old Age Pension Bill. Out of the three blocked bills examined in this study, the Old Age Pension Bill directly concerned provincial rights. The Senate's chief functions were to legislate, represent and protect; with this bill all three functions came into play. The Old Age Pension Bill provided a good institutional test on the upper chamber as the bill was developed, and passed through the lower chamber with speed – even though this proposed legislation appeared to intrude into provincial jurisdiction. The Senate legislated and ultimately blocked the Old Age Pension Bill for two well founded reasons. The bill was believed to be ultra vires, in that it invaded the rights of the provinces. The senators articulated their respective provinces' concerns in the Canadian Parliament concerning the Old Age Pension Bill as it appeared to be ill-considered, and likely to potentially encroach on the provinces' constitutional rights, as delineated in Section 92 of the *British North America Act*. Such actions ran

contrary to the intentions of Mr. Édouard Cauchon who, as a Father of Confederation, had intended the Canadian Senate to prevent "...the precipitancy of any government which might be disposed to move too fast and go too far...a legislative body able to protect...against the encroachments of power."<sup>8</sup> If passed, the legislation could have created a potentially conflict-generating precedent between the federal and provincial governments. The Senate perception that the Old Age Pension Bill was unconstitutional led to an appropriate decision to block passage of this legislation.

The second reason why the Senate blocked the Old Age Pension Bill was the lack of consent from the provinces, of legislation that demanded a great deal of participation from their governments as key administrators of the plan. A number of senators believed that the federal government was ill-advised to push legislation through Parliament without securing a firm agreement from the provinces. The Government felt the best course of action was to pass the Old Age Pension Bill, which was essentially a framework for national pensions, then work out the specifics and technicalities with each province at a later date. The Senate was intended to act as a sober second thought to such bills when they are introduced and passed through the House of Commons with such speed, without the proper examination warranted to them, especially a bill which appeared to be invasive in the provincial field. The Senate performed admirably as it blocked a bill that had been ill-considered in the House of Commons and did not, therefore, represent good public policy of provincial infringement.

### **Lack of Independence**

Although the Senate's blockage of each bill was justified with solid reasoning, in each case the actions of the Senate highlighted the key issue of partisan block voting that had concerned the Fathers of Confederation. Partisan block voting affected the independence of the Senate and the legislative outcomes in each case. The Senate was intended to act as an independent chamber within the Canadian Parliament. The Fathers of Confederation had intended that the Senate should

---

<sup>8</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (2 March 1865), p. 572 (Joseph Édouard Cauchon, Member of Provincial Parliament).



legislate at a distance from strong gusts of public passion, not to be swayed but to evaluate proposed legislation for its true merits, and for the overall benefit of Canada. George Brown and John A. Macdonald, both highly venerable Fathers of Confederation, stated that the Senate was to be an independent chamber. George Brown said, “The desire was to render the upper house a thoroughly independent body – one that would be in the best position to canvass dispassionately the measures of (the lower house)....”<sup>9</sup> John A. Macdonald said the Senate “...must be an independent house, having a free action of its own...” To act on its own was key.

By creating an appointed chamber where its members would sit for life, the Fathers of Confederation tried to establish an independent Senate. By creating an appointed-for-life chamber where the members do not face re-election, it was hoped that senators could evaluate and legislate independently and beneficially for Canada, without fear of losing their seats. However, this intention never resulted in reality. Confederation was in 1867 and by 1873, Senate seats had been filled and then refilled according to the partisan views of the political party installed in office.<sup>10</sup> The pattern of partisan appointments in the Senate was evident throughout the early years of the Senate. For example, G.B Roberts determined John A. Macdonald made one hundred and seventeen party appointments, while Wilfrid Laurier made eighty-three party appointments.<sup>11</sup> Left alone long enough, partisan appointments often result into partisan block voting. Partisan block voting was an issue with the Esquimalt and Nanaimo Railway Bill, and more so with the Naval Aid Bill and the Old Age Pension Bill. Partisan block voting is the act of individuals voting with their respected political parties, not necessarily having an independent mindset and voting on proposed legislation in terms of what they individually considered was best for the nation. I would argue that we cannot blame the Fathers of Confederation in what the Senate developed into. Although the Fathers of Confederation were worried about partisan block voting during the Confederation Conferences, Canadian political parties were in their infancy and party discipline in the legislatures was

---

<sup>9</sup> Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces* (8 February 1865), p. 90 (George Brown, Member of Provincial Parliament).

<sup>10</sup> Harold W.V. Temperley, *Senates and Upper Chambers* (London: Chapman and Hall, 1910), 224.

<sup>11</sup> G.B. Roberts, *The Functions of an English Second Chamber* (London: George Allen and Unwin, 1926) 156.

rather loose.<sup>12</sup> As a result of the fluidity of political partisan behaviour prior to 1867, the Fathers of Confederation did not entirely foresee a Senate which would vote in large rigid blocks based on political party allegiance in Canada.

Having a fixed, constitutionally-rigid number of Senate seats was an additional issue associated with the intention of having a more independent Senate. If the Senate did not have a rigid number of seats and the numbers were rather fluid which could be increased, the government of the day could simply appoint new partisan senators that would vote favourably towards government measures, hence reducing the independence of the upper house. I would argue, is a beneficial inclusion in the *British North America Act*, found in Section 28.<sup>13</sup> However, having a rigid number is disadvantageous as well. If the Senate is at its maximum capacity, then the prime minister could not appoint additional partisan senators, in order to encourage greater partisan support in the Senate. This can create a hindrance in Canada because it also creates Senates with hostile tendencies towards the lower house after there has been a government change in the House of Commons. This was exactly the problem Alexander Mackenzie and his Liberal government incurred when he became prime minister in 1873. According to Robert Dawson, it only took five years after 1867 for a system of party-based nominations to the Senate to become well established in Canada.<sup>14</sup> There was a large Conservative majority in the Senate, while there was a Liberal majority in the House of Commons. This was the first time in Canadian parliamentary history when opposing political parties held different majorities in the two chambers of Parliament. The Prime Minister tried to appoint more members (under Section 26 of the *British North America Act*) as there was majority of Conservative senators and he felt there was an unfair dominance of Conservatives in the Senate. Mackenzie's request was rejected and the Senate did vote in a partisan manner with respect to the blockage of the Esquimalt and Nanaimo Railway Bill, but it was not to the same degree found in later votes, such as the other two blocked bills considered in this study. Perhaps the Senate, still in its relative

---

<sup>12</sup> See Peter H. Russell, *Constitutional Odyssey* (Toronto: University of Toronto Press, 2004), 16.

<sup>13</sup> Please refer to Appendix E for the full except of the Section.

<sup>14</sup> Robert MacGregor Dawson. *The Principle of Official Independence* (Toronto: S.B. Gundy, 1922), 243.

infancy, exhibited some independence which was intended by the Fathers of Confederation as the Senate had not matured and established itself fully by 1875.

The primary cause of a loss of independence would be if political parties dictated the vote outcome and, secondly, if the political leaders outside the Senate tried to influence the vote within the Senate. Clearly political partisanship was involved with the Naval Aid Bill. As Dawson noted, by the time the Conservatives got back into power, the Liberals, under Laurier had "...completed a fifteen-year tenure without making one Conservative appointment."<sup>15</sup> Senate independence was a major concern and it was intended that senators would legislate independently from outside interference, interference such as threats by their local constituents to remove them from political office at the next election if they voted in a particular way. However, this is independence from the people. As Robert Dawson has argued, "An examination of the history of the Senate...shows that while it was the aim of the founders of the Dominion to secure the personal independence of its members, that aim has never been secured."<sup>16</sup>

The intention for the Senate to be a thoroughly independent chamber was not fulfilled either with the Naval Aid Bill. As Dawson argued, the Canadian Senate, "...is independent of the people certainly, and that does not appear to be much in its favour; but, as for independence in the higher sense of impartiality or freedom from party prejudices and predilections, it can lay no claim to the slightest infusion of it."<sup>17</sup> The Senate demonstrated a great lack of independence with the clear demonstration of partisan voting. Perhaps the Naval Aid Bill polarized the two political parties to such a degree that nothing less could be expected. It was debated in the House of Commons for months, only passed with the adoption of closure and broke parliamentary records. A middle ground could not have been achieved. Wilfrid Laurier and Robert Borden were two dynamic leaders who both commanded great respect among their respective peers, so much so as to influence and shape the formal lawmaking decisions in the Senate. As Marc Milner noted, Wilfrid Laurier "...was able to impose party discipline on Liberal senators when the navy aid bill came

---

<sup>15</sup> Ibid., 244.

<sup>16</sup> Ibid., 240.

<sup>17</sup> Ibid., 251.

forward for a vote on 29 May 1913 and was rejected.”<sup>18</sup> The Liberal senators probably thought, if Laurier resigned, who would lead against Borden and the Conservatives? The choice was clear for the Liberal senators – they had to block the bill. However, for every charge that the Liberals received concerning partisanship – the Conservative senators were equally guilty. If the Conservative senators were any less partisan there would have been a greater distribution of Conservative votes during the final vote outcome.

By 1926 the Canadian Senate had a power shift and Conservatives were in a strong majority in the Senate while there was a Liberal minority-government in the House of Commons and this again caused political partisan problems. A number of Conservative senators voiced their concern over the Old Age Pension Bill as it entered the legislative process in Parliament unexpectedly, having not been mentioned in the election campaign or in the Speech from the Throne. The argument that the Senate ought to have blocked this bill because it was not mentioned in the election campaign or Speech from the Throne is very weak. There are hundreds of government bills introduced that never have been mentioned in these forums. Just because a bill is not mentioned in the election campaign or the Speech from the Throne, does not mean the government cannot introduce it.

Although no direct evidence of political interference was found from prominent members of parliament towards the Senate, as was with the case of the Naval Aid Bill, there are always questions of that possibility with the Old Age Pension Bill. The bill was created through an agreement within the House of Commons that would enable the minority Liberal Government to maintain confidence in the lower chamber. The Conservatives might have applied any tactic to break that confidence – even in the Senate. By voting against the bill, the Senate might have tested the support that the Liberals had obtained from Labour members in the House of Commons. The vote outcome in the Esquimalt and Nanaimo Railway Bill, the Naval Aid Bill, and the Old Age Pension Bill, all show that partisan block voting was an issue and that senators did not have the free independent action of their own, as the Fathers of Confederation had intended.

---

<sup>18</sup> Marc Milner, *Canada's Navy: The First Century* (Toronto: University of Toronto Press, 1999), 28.

## Post-Script

As with everything, life continued after the Senate's blockages of the three government bills. The railway between Esquimalt and Nanaimo was privately financed by a coal magnate and completed in 1886.<sup>19</sup> Canada never financed the three Dreadnought battleships, but did enter the First World War at Britain's side as a strong ally and Canada's military policy changed at the outbreak to accommodate the fact that it was a country at war. The Old Age Pension Bill, which was blocked in June of 1926, was reintroduced in the House of Commons in February of 1927.<sup>20</sup> Between that time there was another Canadian general election, and Mackenzie King made old age pensions a prominent campaign issue. The Liberals were returned to office and the Senate subsequently passed the legislation as the Government had a clear electoral mandate supporting the measure.<sup>21</sup>

## Conclusion

### Partisan Appointments and the Lack of Independence

There is a clear problem with partisan appointments to the Senate, resulting in a lack of senatorial independence. The Fathers of Confederation believed that an appointed Senate would be more independent, since there would be no public elections the senators could evaluate and legislate on what was the correct and beneficial thing to do for Canada. However, this has not always been the case. Just because the senators could be independent, it does not mean they always would be independent. The chief antagonist of Senate independence is the partisan appointment. As John Turner argued, "Political considerations have succeeded in depriving the Senate of any independence. Party appointments to the Senate produce, naturally enough, party senators; and their independence, their calm judgement, their impartiality tend to vanish when subjected to strain."<sup>22</sup> A Liberal appointment would equate to Liberal voting, a Conservative appointment would lead to Conservative voting. Prime Minister Arthur Meighen once said, "The Senate is worthless if it

---

<sup>19</sup> See S. W. Jackman, *Vancouver Island* (Harrisburgh: Stackpole Books, 1972), 47.

<sup>20</sup> See Kenneth Bryden, *Old Age Pensions and Policy-Making in Canada*. (Montreal: McGill-Queen's University Press, 1974), 72.

<sup>21</sup> See Henry S. Albinski, "The Canadian Senate: Politics and the Constitution," *The American Political Science Review* Vol. 57, No. 2 (June, 1963): 381.

<sup>22</sup> John Turner, "The Senate of Canada – Political Conundrum," in *Canadian Issues: Essays in Honour of Henry F. Angus*, ed. Robert M. Clark (Toronto: University of Toronto Press, 1961), 72.

becomes merely another Commons divided upon party lines and indulging in party debates such as are familiar in the lower chamber session after session. If the Senate ever permits itself to fulfil that function and that alone in the scheme of Confederation, then the sooner it is abolished the better.”<sup>23</sup>

There is a problem with the ‘independence’ concept. There is a lack of independence in the Senate, but what is independence, and from what? Independence from outside forces? Independence from the public? Independence from political parties? The public influenced the Senate, primarily during the Naval Aid Bill, they are an outside force, but so was Wilfrid Laurier. Who and what is the Senate supposed to be independent from. The concept of the Senate being independent, I would argue, is far too vague. Individuals must not forget that the Senate is not pure and it is not a completely isolated chamber as it forms an integral part of Parliament. The Canadian Parliament is a bicameral legislature and the House of Commons will always have some influence over the Senate and vice versa. As Canada developed, so did Parliament, and what was once rather loose partisanship in the Senate, developed into rather rigid partisanship with predictable voting patterns. A non-partisan Senate may not be achievable without some significant reform. The Senate did not fully fulfil all the intentions of the Fathers of Confederation from 1864, but to fulfil all the intentions perhaps might be too large of an expectation for it to follow. Nations develop and situations change that could not have been anticipated by the Fathers of Confederation, such as at the time of the Naval Aid Bill when the leader of the opposition in the House of Commons threatened to resign if the Senate did not do as requested. However, a nation can grow, develop and mature beyond these particular situations and reform of Parliament can be designed to prevent such action in the future.

The analysis of the three bills provided in this thesis shows that immediately following Confederation, the Senate provided a sober second thought during Canada’s formative years. The Senate protected Canadians against hasty legislation and the creation of bad precedents. The Senate also encouraged financial prudence, and blocked legislation that would have infringed into the provincial field. These were three rather controversial bills introduced in Parliament that were blocked, but

---

<sup>23</sup> Arthur Meighen, “The Canadian Senate,” *Queen’s Quarterly* Vol. 44, No. 2 (Summer 1937): 159.

as Robert MacKay has argued, “The Senate is virtually indispensable as a revising chamber for legislation coming up from the Commons. The great bulk of legislation is non-controversial and for the purpose of amendment the party balance in the Senate makes little difference. It is highly important that legislation passed by Parliament should be as nearly perfect as possible in order to avoid administrative embarrassment, legal uncertainties and consequent litigation.”<sup>24</sup> The Senate did well, but it cannot claim to be a thoroughly independent chamber because it acted in a partisan manner – but it was never unprofessional. Serge Joyal, a highly respected and venerable senator has stated, “The Senate is perhaps the last remaining obstacle to the total domination of Parliament by the executive government. Its demise would signal the atrophy of parliamentary federalism in Canada and the birth of a less Canadian system of government.”<sup>25</sup>

### Directions for Future Research

In looking to the future research if one was to study similar bills, it would be interesting to examine the dynamics and relationship further between the Senate and House of Commons with legislation that might infringe on the rights of the provinces when the two chambers shared the same majority governing party. There would be a rather interesting dynamic for the senator as would they represent the province or support the party? However, the period of study ought to be after 1915 when Western Canada was officially designated as a region in the Senate and had twenty-four senators representing the Western provinces so as not to handicap any one region’s representation.

Critical analysis of the modern unreformed Senate is rather straightforward, but perhaps in a future study some scholars ought to create a series of different reformed Senate models and theorize how they would perform in Canada. How would each model theoretically perform within the first five years, within the first decade and so on? What role would the provinces play throughout the years? Theoretically, how would Canadians react to different models, through either senator

---

<sup>24</sup> Robert A. MacKay, *The Unreformed Senate of Canada* (Toronto: McClelland and Stewart, 1967), 110.

<sup>25</sup> Serge Joyal, “Conclusion: The Senate as the Embodiment of the Federal Principle,” in *Protecting Canadian Democracy: The Senate You Never Knew*, ed. Serge Joyal (Montreal: McGill-Queen’s University Press, 2003), 307.

selection or consistent use of legislative power? This is not an effortless task, but I would argue the analysis would be rather interesting to Canadianists, political scientists, political theorists and anyone interested in institutional reform.

### Reform in the Present Day

Following the Senate's creation in 1867 it has been designated as a problematic institution in need of reform, subjected to numerous reform proposals that have provided a wealth of literature on the Canadian upper chamber. At the present time, Prime Minister Harper has been actively discussing and trying to reform Canada's upper chamber in Parliament. In the Speech from the Throne that followed Harper's formation of a majority government after the 2011 election, Governor General Johnston said, "Reform of the Senate remains a priority for our Government. Our Government will reintroduce legislation to limit term lengths and to encourage provinces and territories to hold elections for Senate nominees."<sup>26</sup> In scholarly analysis, David Docherty has argued that there is success with simplicity in that the "...best hope for change to the structure of the Senate lies in smaller, incremental moves that do not require amending the Canadian Constitution."<sup>27</sup> This is the current method that Prime Minister Harper is trying with Bill C-7, *An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits*.<sup>28</sup> There are two key elements of the bill which involve the selection of new senators, and term limits. The bill states that the prime minister "...must consider names from the most current list of Senate nominees selected for that province or territory."<sup>29</sup> How those names are placed on the list is unclear and the prime minister only needs to 'consider' the list of names and is not required to follow the provided list. An interesting situation would develop if the provinces ran an open and perfectly legitimate Senate election and provided the names of the 'elected' on a list for the prime minister of the day to be considered, but the prime

---

<sup>26</sup> Canada. Speech from the Throne. *Here for all Canadians: Stability, Prosperity, Security*. (Ottawa. 3 June 2011), 15.

<sup>27</sup> Docherty, "The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About," 28.

<sup>28</sup> Parliament of Canada. "Bill C-7 - An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits."

<http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5101177&file=4>

(Date created unknown, date last accessed on 31 August 2011).

<sup>29</sup> Ibid.



minister decided to appoint someone else. The second element of Bill C-7 is senator term limits and the bill states that a senator's term will expire after nine years of being summoned.<sup>30</sup> Senate reform remains very difficult and only time will tell whether Harper will be successful or if his proposal will be added to the other failed attempts.

Reforming upper chambers is not an exclusively Canadian topic as other countries have also proposed reform to their upper chambers. The most notable is the discussion occurring in Britain surrounding the House of Lords. In the most recent Queen's Speech, Her Majesty said, "My Government will propose parliamentary and political reform to restore trust in democratic institutions and rebalance the relationship between the citizen and the state. (...) Proposals will be brought forward for a reformed second house that is wholly or mainly elected on the basis of proportional representation."<sup>31</sup> This is remarkable as the Fathers of Confederation used the House of Lords as a model for the Canadian Senate, and it too is now in the reform spotlight. It is also rather interesting as both are contemplating the election of further members, rather than continued appointment. As one can see there have been active discussions surrounding reform to both the Canadian and British upper chambers, and certainly strong parallels based on similarities between the two chambers make it a valid and beneficial relationship in the international transfer of knowledge.

The calls for reform in the twenty-first century are not surprising as it is socially and politically unacceptable to have appointed members in the Canadian Senate. Reform and revitalization of the Senate and other democratic institutions will be beneficial. Former speaker of the Senate, Wishart Robertson once argued "...there is a real need to consciously and continuously (cultivate) our democratic institutions...trying to improve and better them, if they are to survive and if freedom,

---

<sup>30</sup> Ibid.

<sup>31</sup> House of Lords, "Queen's Speech."

<http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100525-0001.htm#1005255000174>  
(Date created unknown, Date last accessed on 31 August 2011).

as we know it, is not to perish.”<sup>32</sup> Canada is potentially on the verge on reforming its upper chamber.

There are problems with the contemporary Senate and this study also concluded that there were problems with the Senate during the first sixty years of Confederation. The expectations of the Fathers of Confederation were not entirely met after the Senate was created and this is relevant in the modern discussion as it provides more weight upon the arguments for Senate reform. However, the discussion in this thesis suggests that there must be caution about reform and the Senate. What reformers intend may not always come about after the period of reform takes place. An important consideration and a word of caution goes out to the individuals who wish for parliamentary institutional reform, what you want and what you get after a period of reform might be two completely different things. Institutional reformers should take note.

---

<sup>32</sup> Library and Archives Canada, Wishart Robertson Fonds, R9206 #3, "Constitution of the Senate" series, 3-10, 1944, *The Canadian Senate – Its Purpose and Function*, page 2, Senator Wishart Robertson's address to the Lion's Club of St. Catharines, Ontario, 24 October 1944.

## **Appendix A:**

### **Significant dates regarding the Esquimalt and Nanaimo Railway Bill**

1 July 1867	Confederation.
20 July 1871	British Columbia entered Confederation.
7 November 1873	Alexander Mackenzie became Prime Minister.
February 1874	James Edgar went to British Columbia.
19 May 1874	James Edgar left British Columbia.
November 1874	Carnarvon Terms were laid out.
19 March 1875	First reading in the House of Commons.
29 March 1875	Third reading in the House of Commons.
3 April 1875	First reading in the Senate.
6 April 1875	The Esquimalt and Nanaimo Railway Bill received hoist amendment.
8 April 1875	Parliament was prorogued and the Esquimalt and Nanaimo Railway Bill dies on the order paper of the Senate.

## **Appendix B:**

### **Significant dates regarding the Naval Aid Bill**

Summer 1912	Prime Minister Robert Borden visited Britain.
21 November 1912	Speech from the Throne.
5 December 1912	First reading in the House of Commons.
28 February 1913	Second reading in the House of Commons.
9 April 1912	Closure applied to the Naval Aid Bill.
15 May 1913	Third reading in the House of Commons.
20 May 1913	First reading in the Senate.
29 May 1913.	Blocked in the Senate.

## **Appendix C:**

### **Significant dates regarding the Old Age Pension Bill**

29 October 1925	1925 Canadian Federal Election.
8 January 1926	Speech from the Throne.
26 March 1926	Discussion started in the House of Commons.
15 April 1926	First reading in the House of Commons.
16 April 1926	Second reading in the House of Commons.
28 May 1926	Third reading in the House of Commons.
1 June 1926	First reading in the House of Commons.
8 June 1926	Blocked in the Senate.

## **Appendix D:**

### **Excerpts of the 72 Quebec Resolutions<sup>1</sup>**

**6.** There shall be a General Legislature or Parliament for the Federated Provinces, composed of a Legislative Council and a House of Commons.

**7.** For the purpose of forming the Legislative Council, the Federated Provinces shall be considered as consisting of three divisions: 1st Upper Canada, 2nd Lower Canada, 3rd Nova Scotia, New Brunswick and Prince Edward Island; each division with an equal representation in the Legislative Council.

**8.** Upper Canada shall be represented in the Legislative Council by 24 members, Lower Canada by 24 members, and the 3 Maritime Provinces by 24 members, of which Nova Scotia shall have 10, New Brunswick 10, and Prince Edward Island 4 members.

**11.** The members of the Legislative Council shall be appointed by the Crown under the Great Seal of the General Government, and shall hold office during life: if any Legislative Councillor shall, for two consecutive sessions of Parliament, fail to give his attendance in the said Council, his seat shall thereby become vacant.

**12.** The members of the Legislative Council shall be British subjects by birth or naturalization, of the full age of thirty years, shall possess a continuous real property qualification of four thousand dollars over and above all incumbrances, and shall be and continue worth that sum over and above their debts and liabilities, but in the case of Newfoundland and Prince Edward Island, the property may be either real or personal.

**14.** The first selection of the Members of the Legislative Council shall be made, except as regards Prince Edward Island, from the Legislative Councils of the various Provinces, so far as a sufficient number be found qualified and willing to serve; such Members shall be appointed by the Crown at the recommendation of the General Executive Government, upon the nomination of the respective Local Governments, and in such nomination due regard shall be had to the claims of the Members of the Legislative Council of the Opposition in each Province, so that all political parties may as nearly as possible be fairly represented.

---

<sup>1</sup> Canada. Library and Archives Canada. "The Quebec Resolutions, October, 1864" Government of Canada. <http://www.collectionscanada.gc.ca/confederation/023001-7104-e.html> (Date created 14 December 2001, Date last accessed on 31 August 2011).

## **Appendix E:**

### **Excerpts of the *British North America Act, 1867*<sup>1</sup>**

**21.** The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.

**22.** In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions:

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick;

which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows:

- Ontario by Twenty-four Senators;
- Quebec by Twenty-four Senators;
- and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the Case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.

**23.** The Qualifications of a Senator shall be as follows:

- (1.) He shall be of the full Age of Thirty Years:
- (2.) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada after the Union:
- (3.) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in Free and Common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same:
- (4.) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities:
- (5.) He shall be resident in the Province for which he is appointed:

---

<sup>1</sup> Canada. Department of Justice Canada. “*British North America Act, 1867*” Government of Canada. <http://www.justice.gc.ca/eng/pi/const/lawreg-loireg/p1t11.html> (Date created unknown, date last accessed on 31 August 2011).

- (6.) In the Case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

**24.** The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

**25.** Such Persons shall be first summoned to the Senate as the Queen by Warrant under Her Majesty's Royal Sign Manual thinks fit to approve, and their Names shall be inserted in the Queen's Proclamation of Union.

**26.** If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to Three or Six qualified Persons (as the Case may be), representing equally the Three Divisions of Canada, add to the Senate accordingly.

**27.** In case of such Addition being at any Time made, the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the Three Divisions of Canada is represented by Twenty-four Senators and no more.

**28.** The Number of Senators shall not at any Time exceed Seventy-eight.

**29.** A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

**31.** The Place of a Senator shall become vacant in any of the following Cases:

- (1.) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate:
- (2.) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power:
- (3.) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter:
- (4.) If he is attainted of Treason or convicted of Felony or of any infamous Crime:
- (5.) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

**32.** When a Vacancy happens in the Senate by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.



**33.** If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

**34.** The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

**35.** Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

**36.** Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.

**53.** Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

**91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms of this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say, --

1. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.
8. The fixing of and providing for the Salaries and Allowances of Civil and other Officers of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.

19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians, and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

And any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

**92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated, that is to say,

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant Governor.
2. Direct Taxation within the Province in order to the raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes,--
  1. Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province:

2. Lines of Steam Ships between the Province and any British or Foreign Country:
3. Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.
16. Generally all Matters of a merely local or private Nature in the Province.

## **Bibliography**

Ajzenstat, Janet. "Bicameralism and Canada's Founders: The Origins of the Canadian Senate." In *Protecting Canadian Democracy: The Senate You Never Knew*, edited by Serge Joyal, 3-30. Montreal: McGill-Queen's University Press, 2003.

Albinski, Henry S. "The Canadian Senate: Politics and the Constitution." *The American Political Science Review* Vol. 57, No. 2 (June 1963): 378-391.

Begg, Alexander. *History of British Columbia: From Its Earliest Discovery to the Present Time*. Toronto: McGraw-Hill Ryerson Limited, 1972.

Bernard, Hewitt. "Minutes of the Quebec Conference, 10-29 October, 1864." In *Documents on the Confederation of British North America*, ed. G.P. Browne, Toronto: McClelland and Stewart Limited, 1969.

Bolton, E.C. and H.H. Webber. *The Confederation of British North America*. London: Chapman and Hall, 1866.

Borden, Robert. "Constitutional Development from Confederation to the World War." The Marfleet Lectures, University of Toronto. *Canadian Constitutional Studies*. Toronto: University of Toronto, 1921.

Brady, Alexander. *Democracy in the Dominions*. Toronto: University of Toronto Press, 1947.

Bryden, Kenneth. *Old Age Pensions and Policy-Making in Canada*. Montreal: McGill-Queen's University Press, 1974.

Bumsted, J.M. *The Peoples of Canada: A Post-Confederation History*. Don Mills: Oxford University Press, 2004.

Canada. Department of Justice Canada. "British North America Act, 1867." Government of Canada. <http://www.justice.gc.ca/eng/pi/const/lawreg-loireg/p1t11.html> (Date created unknown. Date last accessed on 31 August 2011).

\_\_\_\_\_. Department of Labour. *Old Age Pension Systems Existing in Various Countries*. Ottawa: F.A. Acland, 1926.

\_\_\_\_\_. Library and Archives Canada. "The Quebec Resolutions, October, 1864." Government of Canada. <http://www.collectionscanada.gc.ca/confederation/023001-7104-e.html> (Date created 14 December 2001. Date last accessed on 31 August 2011).

\_\_\_\_\_. Speech from the Throne. *Here for all Canadians: Stability, Prosperity, Security*. Ottawa. 3 June 2011.

Canadian Broadcasting Corporation. *The Apprenticeship*. Montreal: Canadian Broadcasting Corporation International Service, 1967.

Creighton, D.G. "Canada in the English-Speaking World." *The Canadian Historical Review* Vol. 26. No. 2 (June 1945): 119-127.

\_\_\_\_\_. *Canada's First Century, 1867-1967*. Toronto: Macmillan of Canada, 1970.

\_\_\_\_\_. *The Road to Confederation – The Emergence of Canada: 1863-1867*. Toronto: Macmillan of Canada, 1964.

Daily British Colonist. "As to the Action of the Senate." *Daily British Colonist* (Victoria, British Columbia), 12 June 1875.

\_\_\_\_\_. "The Esquimalt and Nanaimo Railway Bill and the Senate." *Daily British Colonist* (Victoria, British Columbia), 10 April 1875.

\_\_\_\_\_. "The Esquimalt-Nanaimo Railway." *Daily British Colonist* (Victoria, British Columbia), 25 April 1875.

\_\_\_\_\_. "The Esquimalt-Nanaimo Railway." *Daily British Colonist* (Victoria, British Columbia), 19 March 1875.

\_\_\_\_\_. "The New Terms." *Daily British Colonist* (Victoria, British Columbia), 16 January 1875.

\_\_\_\_\_. "The Reject Bill." *Daily British Colonist* (Victoria, British Columbia), 11 May 1875.

\_\_\_\_\_. "Who Killed Cock Robin?" *Daily British Colonist* (Victoria, British Columbia), 1 May 1875.

Daily Colonist. "The Island Railway." *Daily Colonist* (Victoria, British Columbia), 9 November 1880.

Daily Free Press. "Dominion Parliament." *Daily Free Press* (Winnipeg, Manitoba), 7 April 1875.

\_\_\_\_\_. "Ottawa." *Daily Free Press* (Winnipeg, Manitoba), 1 April 1875.

Dawson, Robert MacGregor. *The Principle of Official Independence*. Toronto: S.B. Gundy, 1922.

Dawson, Robert MacGregor, and W. F. Dawson. *Democratic Government in Canada*. Toronto: University of Toronto Press, 1971.

Discussions in Conference of the Delegates from the Provinces of British North America, Conference Chamber, Parliament House, Quebec, 11 October 1864. In *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope, Toronto: The Carswell Co. Ltd, 1895.

Docherty, David. *Legislatures*. Vancouver: University of British Columbia Press, 2005.

\_\_\_\_\_. "The Canadian Senate: Chamber of Sober Reflection or Loony Cousin Best Not Talked About." *The Journal of Legislative Studies* Vol. 8, No. 3 (Autumn 2002): 27–48.

Dominion of Canada. *Debates of the House of Commons of the Dominion of Canada*, Volume 1, Session 1875, 3<sup>rd</sup> Parliament (1875).

\_\_\_\_\_. *Debates of the House of Commons of the Dominion of Canada*, Twelfth Parliament, Second Session (1912-1913).

\_\_\_\_\_. *Debates of the House of Commons of the Dominion of Canada*, Fifteenth Parliament, First Session (1926).

\_\_\_\_\_. *Debates of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament (1875).

\_\_\_\_\_. *Debates of the Senate of the Dominion of Canada*, Twelfth Parliament, Second Session, (1912-1913).

\_\_\_\_\_. *Debates of the Senate of the Dominion of Canada*, Fifteenth Parliament, First Session (1926).

\_\_\_\_\_. *Journals of the House of Commons of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament (1875).

\_\_\_\_\_. *Journals of the House of Commons of the Dominion of Canada*, Twelfth Parliament, Second Session (1912-1913).

\_\_\_\_\_. *Journals of the Senate of the Dominion of Canada*, 2<sup>nd</sup> Session, 3<sup>rd</sup> Parliament (1875).

\_\_\_\_\_. *Journals of the Senate of the Dominion of Canada*, Twelfth Parliament, Second Session (1912-1913).

\_\_\_\_\_. *Journals of the Senate of the Dominion of Canada*, Fifteenth Parliament, First Session (1926).

Doughty, Arthur George, "Notes on the Quebec Conference." *The Canadian Historical Review* Vol.1, No.1 (March 1920): 26-47.

Dyck, Rand. *Canadian Politics: Critical Approaches*. Scarborough ON: Thomson Nelson, 2004.

Finlay, J.L. and D.N. Sprague. *The Structure of Canada History*. Scarborough ON: Prentice-Hall Canada, 2000.

Fox, Paul W. *Politics: Canada*. Toronto: McGraw-Hill Ryerson Limited, 1982.

Gazette. "Does Not Take Senate Seriously." *Gazette* (Montreal, Quebec), 31 May 1913.

\_\_\_\_\_. "Laurier Issues An Ultimatum." *Gazette* (Montreal, Quebec), 26 May 1913.

\_\_\_\_\_. "Liberals Decide on Obstruction." *Gazette* (Montreal, Quebec), 4 April 1913.

\_\_\_\_\_. "Naval Debate Resumes Tomorrow." *Gazette* (Montreal, Quebec), 13 January 1913.

\_\_\_\_\_. "Old Age Pension Scheme Debate is Started in House." *Gazette* (Montreal, Quebec), 16 April 1926.

\_\_\_\_\_. "Senate Denounced For Killing Bill." *Gazette* (Montreal, Quebec), 18 June 1926.

\_\_\_\_\_. "The Naval Aid Bill." *Gazette* (Montreal, Quebec), 31 May 1913.

\_\_\_\_\_. "The Naval Situation." *Gazette* (Montreal, Quebec), 23 February 1913.

\_\_\_\_\_. "The Senate's Critics." *Gazette* (Montreal, Quebec), 21 June 1926.

Gibbins, Roger. *Conflict and Unity: An Introduction to Canadian Political Life*. Scarborough ON: Nelson Canada, 1994.

Globe. "100,000 are Eligible for Old-Age Pension, is Ottawa Estimate." *Globe* (Toronto, Ontario), 27 March 1926.

\_\_\_\_\_. "Dramatic Deadlock Temporarily Ended." *Globe* (Toronto, Ontario), 10 March 1913.

\_\_\_\_\_. "Liberal Leader Defines Issue Between Parties." *Globe* (Toronto, Ontario), 22 March 1913.

\_\_\_\_\_. "More Education Needed." *Globe* (Toronto, Ontario), 10 June 1926.

\_\_\_\_\_. "Old Age Pensions." *Globe* (Toronto, Ontario), 9 April 1926.

\_\_\_\_\_. "Old-Age Pensions Elsewhere." *Globe* (Toronto, Ontario), 2 February 1926.

\_\_\_\_\_. "Railway From Esquimalt to Nanaimo." *Globe* (Toronto, Ontario), 30 March 1875.

\_\_\_\_\_. "The Unreformed Senate." *Globe* (Toronto, Ontario), 24 June 1926.

\_\_\_\_\_. "The Victoria and Nanaimo Railway." *Globe* (Toronto, Ontario), 5 April 1875.

Gordon, Lieut.-Governor Arthur Hamilton, "Lieut.-Governor Arthur Hamilton Gordon of New Brunswick to Colonial Secretary Edward Cardwell, 26 September 1864." *Documents on the Confederation of British North America*, ed. G.P. Browne, Toronto: McClelland and Stewart Limited, 1969.

Hammond, Melvin O. *Confederation and its Leaders*. Toronto: McClelland, Goodchild and Stewart, 1917.

Hopkins, E. Russell. "What's Right About The Senate." *McGill Law Journal* Vol.8, No. 3 (1962): 168-175.

Hopkins, John C. *The Canadian Annual Review of Public Affairs 1912*. Toronto: The Annual Review Publishing Company, 1913.

\_\_\_\_\_. *The Canadian Annual Review of Public Affairs 1913*. Toronto: The Annual Review Publishing Company, 1914.

House of Commons. "Hoist Amendment to Bills." Legislative Process, [http://www.parl.gc.ca/compendium/web-content/c\\_d\\_hoistamendmentsbills-e.htm](http://www.parl.gc.ca/compendium/web-content/c_d_hoistamendmentsbills-e.htm) (Date created unknown. Date revised March 2006. Date last accessed on 31 August 2011).

\_\_\_\_\_. "Prorogation of Parliament." Parliamentary Cycle, [http://www.parl.gc.ca/compendium/web-content/c\\_d\\_prorogationparliament-e.htm](http://www.parl.gc.ca/compendium/web-content/c_d_prorogationparliament-e.htm) (Date created unknown. Date revised March 2006. Date last accessed on 31 August 2011).

House of Lords. "Queen's Speech." <http://www.publications.parliament.uk/pa/ld201011/ldhansrd/text/100525-0001.htm#1005255000174> (Date created unknown. Date last accessed on 31 August 2011).



Howay, F.W. *British Columbia: The Making of a Province*. Toronto: Ryerson Press, 1929.

Jackman, S.W. *Vancouver Island*. Harrisburgh: Stackpole Books, 1972.

Jick, Todd D. "Mixing Qualitative and Quantitative Methods: Triangulation in Action." Administrative Science Quarterly Vol. 24. No. 4 (December 1979): 602-611.

Joyal, Serge. "Conclusion: The Senate as the Embodiment of the Federal Principle." In *Protecting Canadian Democracy: The Senate You Never Knew*, edited by Serge Joyal, 3-30. Montreal: McGill-Queen's University Press, 2003.

Kelle, Udo. "Sociological Explanations between Micro and Macro and the Integration of Qualitative and Quantitative Methods." Forum: Qualitative Social Research Vol. 2. No. 1: (February 2001): Art. 5 (20 Pages).

Kennedy, W.P.M. *Statutes, Treaties and Documents of the Canadian Constitution 1713-1929*. Toronto: Oxford University Press, 1930.

Kunz, F. A. *The Modern Senate of Canada, 1925-1963*. Toronto: University of Toronto Press, 1967.

MacKay, Robert A. *The Unreformed Senate of Canada*. London: Oxford University Press, 1926.

\_\_\_\_\_. *The Unreformed Senate of Canada*. Toronto: McClelland and Stewart, 1967.

Malcolmson, Patrick, and Richard Myers. *The Canadian Regime*. Peterborough ON: Broadview Press, 2005.

Manitoba Free Press. "Cash or Men? Or Both?" *Manitoba Free Press* (Winnipeg, Manitoba), 7 December 1912.

\_\_\_\_\_. "High Standard of Debate Continues." *Manitoba Free Press* (Winnipeg, Manitoba), 8 March 1913.

\_\_\_\_\_. "Threat of Closure by Premier Borden." *Manitoba Free Press* (Winnipeg, Manitoba), 20 March 1913.

\_\_\_\_\_. "Wants Plebiscite on Navy Question." *Manitoba Free Press* (Winnipeg, Manitoba), 25 February 1913.

\_\_\_\_\_. "Week Continuous Debate Expected." *Manitoba Free Press* (Winnipeg, Manitoba), 5 March 1913.

\_\_\_\_\_. "Well Planned Effort to Apply Gag Was Failure." *Manitoba Free Press* (Winnipeg, Manitoba), 7 March 1913.

Marleau, Robert, and Camille Montpetit. "The Curtail of Debate: Closure." Parliament of Canada.  
<http://www2.parl.gc.ca/MarleauMontpetit/DocumentViewer.aspx?Sec=Ch14&Seq=3&Lang=E> (Date created January 2000. Date last accessed on 31 August 2011).

Martin, Ged. *Britain and the Origins of Confederation, 1837-67*. London: Macmillian Press Ltd., 1995.

Meighen, Arthur. "The Canadian Senate." *Queen's Quarterly* Vol. 44. No. 2 (Summer 1937): 152-163.

Messamore, Barbara J. "The Line Over Which He Must Not Pass: Defining the Office of the Governor General, 1878." *The Canadian Historical Review* Vol. 86, No. 3 (September 2005): 453-483.

Mill, John Stuart. *Considerations on Representative Government*. London: Parker, Son and Bourn., 1861.

Milner, Marc. *Canada's Navy: The First Century*. Toronto: University of Toronto Press, 1999.

Moore, Christopher. *1867: How the Fathers Made a Deal*. Toronto: McClelland and Stewart Ltd., 1997.

Morning Chronicle. –No Title– Morning Chronicle (Halifax, Nova Scotia), 7 April 1875.

\_\_\_\_\_. "Did Its Duty." *Morning Chronicle* (Halifax, Nova Scotia), 31 May 1913.

\_\_\_\_\_. "Ottawa." Morning Chronicle (Halifax, Nova Scotia), 30 March 1875.

\_\_\_\_\_. "Safe and Saving." *Morning Chronicle* (Halifax, Nova Scotia), 4 June 1913.

\_\_\_\_\_. "Unholy Alliance." *Morning Chronicle* (Halifax, Nova Scotia), 2 June 1913.

Morton, Desmond. *A Military History of Canada*. Toronto: McClelland and Stewart Ltd, 1999.

New York Times. "Canada Rejects Naval Aid." *New York Times* (New York City, New York), 31 May 1913.

Ormsby, Margaret A. *British Columbia: A History*. Vancouver: Evergreen Press, 1959.

\_\_\_\_\_. "Prime Minister Mackenzie, The Liberal Party, and the Bargain with British Columbia." *The Canadian Historical Review* Vol. 26. No. 2, (June 1945): 148-173.

Parliament of Canada. "Bill C-7 - An Act respecting the selection of senators and amending the Constitution Act, 1867 in respect of Senate term limits." <http://www.parl.gc.ca/HousePublications/Publication.aspx?Docid=5101177&file=4> (Date created unknown. Date last accessed on 31 August 2011).

\_\_\_\_\_. "Bills Sent to the Other House that did not Receive Royal Assent." Parliament of Canada. <http://www2.parl.gc.ca/Parlinfo/compilations/houseofcommons/legislation/billsbyresults.aspx> (Date created unknown. Date last accessed on 31 August 2011).

\_\_\_\_\_. "Senators." [http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-7a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&Prime\\_Minister=](http://www2.parl.gc.ca/Parlinfo/lists/senators.aspx?Parliament=8714654b-cdbf-48a2-b1ad-7a3c8ece839&Name=&Party=&Province=&Gender=&Current=True&Prime_Minister=) (Date created January 2000. Date last accessed on 31 August 2011).

Provincial Parliament of Canada. *Parliamentary Debates on the subject of the Confederation of the British North American Provinces*, Eighth Parliament, Third Session (1865).

Report: Of resolutions adopted at a Conference of Delegates from the Provinces of Canada, Nova Scotia and New Brunswick, and the Colonies of Newfoundland and Prince Edward Island, held at the City of Quebec, 10<sup>th</sup> October, 1864, as the Basis of a proposed Confederation of those Provinces and Colonies. In *Confederation: Being a Series of Hitherto Unpublished Documents Bearing on the British North America Act*, ed. Joseph Pope, Toronto: The Carswell Co. Ltd, 1895.

Roberts, G.B. *The Functions of an English Second Chamber*. London: George Allen and Unwin, 1926.

Ross, George. *The Senate of Canada: Its Constitution, Powers, and Duties Historically Considered*. Toronto: The Copp, Clark Company Limited, 1914.

Russell, Meg. *Reforming the House of Lords: Lessons from Overseas*. Oxford: Oxford University Press, 2000.

Russell, Meg, and Mark Sandford. "Why are Second Chambers so Difficult to Reform?" *The Journal of Legislative Studies* Vol. 8, No. 3 (Autumn 2002): 79-89.

Russell, Peter H. *Constitutional Odyssey*. Toronto: University of Toronto Press, 2004.

Senate of Canada. "A Legislative and Historical Overview of the Senate of Canada." <http://www.parl.gc.ca/39/1/parlbus/commbus/senate/com-E/pub-E/legislative-e.htm> (Date created unknown, Date revised May 2001, Date last accessed on 31 August 2011).

Sharman, Campbell. "Political Legitimacy for an Appointed Senate." *IRPP Choices* Vol. 14, No. 11 (September 2008): 1-28.

Sifton, Clifford. "The Foundations of the New Era." In *The New Era in Canada*, edited by J.O. Miller, 37-60. Toronto: J.M. Dent and Sons Ltd, 1917.

Smith, David E. *The Canadian Senate in Bicameral Perspective*. Toronto: University of Toronto Press, 2003.

Stilborn, Jack. *Senate Reform: Issues and Recent Developments*. Ottawa: Library of Parliament, 21 January 2008. [http://epe.lac-bac.gc.ca/100/200/301/library\\_parliament/background/2008/senate\\_reform-e/prb0742-e.pdf](http://epe.lac-bac.gc.ca/100/200/301/library_parliament/background/2008/senate_reform-e/prb0742-e.pdf).

Supreme Court of Canada. *Re: Authority of Parliament in Relation to the Upper House* [1980], 1 S.C.R. 54. "In the matter of a Reference by the Governor in Council concerning the legislative authority of the Parliament of Canada in relation to the Upper House, as set out in Order in Council P.C. 1978-3581, dated the 23rd day of November, 1978." <http://scc.lexum.org/en/1979/1980scr1-54/1980scr1-54.html> (Date created unknown, Date revised unknown, Date last accessed on 1 April 2012).

Swenden, Wilfried. *Federalism and Second Chambers*. Brussels: Presses Interuniversitaires Européennes, 2004.

Temperley, Harold W.V. *Senates and Upper Chambers*, London: Chapman and Hall, 1910.

Train Web. "The Esquimalt and Nanaimo Railway." <http://www.trainweb.org/canadianrailways/articles/EsquimaltAndNanaimoRailway.htm> (Date created 2000. Date last accessed on 31 August 2011).

Tucker, Gilbert Norman. *The Naval Service of Canada: Its Official History, Volume 1, Origins and Early Years*. Ottawa: King's Printer, 1952.

Turner, John. "The Senate of Canada – Political Conundrum." In *Canadian Issues: Essays in Honour of Henry F. Angus*, edited by Robert M. Clark, 57-80. Toronto: University of Toronto Press, 1961.

Waite, P. B. *The Confederation Debates in the Province of Canada – 1865*. Toronto: McClelland and Stewart, 1969.

\_\_\_\_\_. *The Life and Times of Confederation 1864-1867*. Toronto: University of Toronto Press, 1962.

White, Randall. *Is Canada Trapped in a Time Warp?* Toronto: Venture Press, 2001.

Wikipedia. "Map of Canada in 1871."

[http://en.wikipedia.org/wiki/File:Canada\\_provinces\\_1871-1873.png](http://en.wikipedia.org/wiki/File:Canada_provinces_1871-1873.png) (Date created 13 February 2006. Date revised 14 July 2009. Date last accessed on 31 August 2011).

## Documents from Library and Archives Canada

Library and Archives Canada. Alexander Mackenzie Fonds, R5744-1-8-E, Reel M-197, Pages 311-317. "Proposed Addition to the Senate." Letter from Lord Kimberley to the Governor General Lord Dufferin, 18 February 1874. (Secret Despatch).

\_\_\_\_\_. Department of Justice Fonds, R188-43-X-E, Volume 2416, File 9-930/1925 Part 1. "*Old Age Pension Act* – Authority of Parliament to legislate on the subject of old age pensions – jurisdiction by provincial legislature: *Old Age Pension Act* and *British North America Act* 1867, S-91 & S-92." Letter from the deputy minister of justice, Mr. W. Stewart Edwards to member of parliament, Mr. William G. Raymond, 23 May 1925.

\_\_\_\_\_. Department of Justice Fonds, R188-43-X-E, Volume 2416, File 9-930/1925 Part 1. "*Old Age Pension Act* – Authority of Parliament to legislate on the subject of old age pensions – jurisdiction by provincial legislature: *Old Age Pension Act* and *British North America Act* 1867, S-91 & S-92." Letter from the minister of Labour (province of British Columbia), Mr. A.M. Mansons to the minister of Labour (federal), Mr. James Murdock, 5 March 1925.

\_\_\_\_\_. Department of Transport Fonds, RG12, Vol. 1980, File #3556-48, Part 1 – 1875-1881, Letter from Sandford Fleming, Engineer-in-Chief of the Canadian Pacific Railway to Charles Tupper, 17 March 1879.

\_\_\_\_\_. Department of Transport Fonds, RG12, Vol. 1980, File #3556-48, Part 1 – 1875-1881, Report of the Esquimalt and Nanaimo Railway, from Marcus Smith, Railway Engineer to Amor De Cosmos, 11 May 1880.

\_\_\_\_\_. Florence Bird Fonds, MG31-D63, Volume 16, Senate of Canada (1), "Notes on Bill C-640, An act to provide for the structural reform of the Senate of Canada." No Date.

\_\_\_\_\_. Florence Bird Fonds, MG31-D63, Volume 16, Senate of Canada (1), "Talk to Alberta Legislative Interns." 3 February 1982.

\_\_\_\_\_. Robert Borden Fonds, R6113-2-3-E, Reel C-4201, Pages 2031-2034. Letter from Prime Minister Robert Borden to the Governor General, the Duke of Connaught, 10 June 1913.

\_\_\_\_\_. Robert Borden Fonds, R6113-2-3-E, Reel C-4202, Pages 2287-2289. Letter from Prime Minister Robert Borden to the Governor General, the Duke of Connaught, 15 February 1913.

\_\_\_\_\_. Robert Borden Fonds, R6113-2-3-E, Reel C-4347, Pages 66604-66613. "Naval Aid Bill 1912." March 1913.

\_\_\_\_\_. Robert Borden Fonds, R6113-2-3-E, Reel C-4347, Pages 66614-66618. "Notes on Opposition Objections to the Naval Aid Bill." 1913.

\_\_\_\_\_. Robert Borden Fonds, R6113-2-3-E, Reel C-4349, Pages 67678-67680. Letter from Leader of the Opposition in the Senate to the Leader of the Government in the Senate, 29 April 1913. (Confidential).

\_\_\_\_\_. William Lyon Mackenzie King Fonds, MG26-J13. "The Diaries of William Lyon Mackenzie King." 7 June 1926.  
<http://www.collectionscanada.gc.ca/databases/king/001059-100.01-e.php> (Date created 4 December 2007. Date last accessed on 31 August 2011).

\_\_\_\_\_. William Lyon Mackenzie King Fonds, R10383-10-9-E, Reel C-2720, Pages 93078-93081. "Old Age Pensions in Canada." Letter from Mr. Peter Keenan to Prime Minister William Lyon Mackenzie King, Specific Date Unknown, Written in 1926.

\_\_\_\_\_. Wishart Robertson Fonds, R9206 #3, "Constitution of the Senate" series, 3-10, 1944, *The Canadian Senate – Its Purpose and Function*, page 15, address to the Lion's Club of St. Catharines, Ontario, 24 October 1944.

\_\_\_\_\_. Wishart Robertson Fonds, R9206 #3, "Miscellaneous Papers Regarding Senate Reform" series, 3-11, 1954. Norman Lambert, *Reform of the Senate*, Winnipeg Free Press Pamphlet No. 30, April 1950.

\_\_\_\_\_. Wishart Robertson Fonds, R9206-3-8-E, File # Constitution of the Senate – 1944, 3-10, Memorandum for Honourable Senator Bench.

\_\_\_\_\_. Wishart Robertson Fonds, R9206-3-8-E, File # Senate Reform – 1949-1953, 3-8, Memorandum for Honourable Senator Bench. Canada. *Debates of the Senate – Official Report* (1 March 1934 – 15 March 1934).